

FILED
U.S. DISTRICT COURT
2006 OCT 20 P 4:22
SALT LAKE CITY

LARRY R. LAYCOCK (USB No. 4868)
C.J. VEVERKA (USB 7110)
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Attorneys for Free Motion Fitness, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FREE MOTION FITNESS, INC. f/k/a,
GROUND ZERO DESIGN CORPORATION,
a Utah Corporation,

Plaintiff,

v.

CYBEX INTERNATIONAL, INC., a New
York Corporation,

Defendant.

Civil Action No. 1:01CV00152 BSJ
(Consolidated with No. 1:02CV00122)

~~PROPOSED~~ ORDER GRANTING
MOTION TO VACATE SCHEDULING
ORDER AND SET STATUS
CONFERENCE

FREE MOTION FITNESS, INC. f/k/a,
GROUND ZERO DESIGN CORPORATION,
a Utah corporation,

Plaintiff,

v.

THE NAUTILUS GROUP, INC. f/k/a
DIRECT FOCUS, INC., a Washington
corporation, and NAUTILUS HUMAN
PERFORMANCE SYSTEMS, INC., a
Virginia corporation,

Defendants.

Honorable Bruce S. Jenkins

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2006, I electronically filed the foregoing
**[PROPOSED] ORDER GRANTING MOTION TO VACATE SCHEDULING ORDER
AND SET STATUS CONFERENCE** with the Clerk of Court by using the CM/EMF system
which sent notification of and a link to such filing to the following counsel for defendants:
carlson.mark@dorsey.com; jacobson.david@dorsey.com; mcgarvey@bermansavage.com;
meiklejohn.paul@dorsey.com; park.brian@dorsey.com; prince.william@dorsey.com; and
ssavage@bermansavage.com.

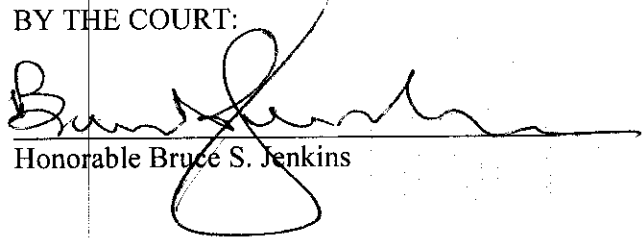
/s/ Tige Keller

TIGE KELLER

Based on the stipulation of the parties, and with good cause appearing, IT IS HEREBY ORDERED that the Scheduling Order of August 30, 2006 in the above referenced matter is vacated and that the parties shall have a Status Conference with the Court on December 12, 2006, at 1:20 p.m.

Dated this 20 day of Oct, 2006

BY THE COURT:


Honorable Bruce S. Jenkins

APPROVED AS TO FORM:

DATED this 19th day of October, 2006.

WORKMAN NYDEGGER

BERMAN, TOMSIC & SAVAGE

/s/ Tige Keller

/s/ Casey McGarvey

Larry R. Laycock
David R. Wright
C.J. Veverka
R. Parrish Freeman
Tige Keller
Clinton E. Duke
Attorneys for Plaintiff Free Motion Fitness, Inc.

*(Signed by Filing Attorney with permission
of Casey McGarvey)*
Casey McGarvey
Attorney for Defendant Cybex International,
Inc.

DORSEY & WHITNEY LLP

/s/ David M. Jacobson

*(Signed by Filing Attorney with permission of
David M. Jacobson)*
Paul T. Meikeljohn
David M. Jacobson
Brett J. Schlameus
M. Steven Marsden
Attorneys for Defendant The Nautilus Group,
Inc.

FILED
U.S. DISTRICT COURT

2005 OCT 20 P 3 09

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OCT 20 2005

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

OFFICE OF

JUDGE TENA CAMPBELL

UNITED STATES OF AMERICA

Plaintiff,

v.

JOLENE HIGAREDA, et al.,

Defendants.

CASE: 1:03CR00152-TC

FINAL ORDER OF FORFEITURE

JUDGE: TENA CAMPBELL

WHEREAS, on November 21, 2005, this Court entered a Preliminary Order of Forfeiture, ordering the defendant to forfeit:

- Real property located at 346 28th Street, Ogden, Utah, more particularly described as:

PARCEL 2: PART OF LOT 3, BLOCK 4, PLAT A, OGDEN CITY SURVEY:
BEGINNING AT A POINT 50 FEET EAST OF THE SOUTH WEST CORNER OF
SAID LOT 3; RUNNING THENCE EAST 35 FEET; THENCE NORTH 180 FEET,
THENCE WEST 35 FEET, THENCE SOUTH 180 FEET TO BEGINNING.
- United States currency seized from the downstairs bedroom, 346 28th Street, Ogden, Utah, in the amount of \$13,496.00.
- United States currency seized from the south bedroom, 346 28th Street, Ogden, Utah, in the amount of \$128,240.00.
- Golden West Credit Union account #: 0000562116 in the names of Santos Higareda and Jolene Higareda, with a balance of \$118,085.31.
- \$44,120.31 of the \$51,620.31 in the Golden West Credit Union account #: 0000691980 in the names of Jolene Higareda and Sergio Balli.
- Bank of Utah Account No. 1674811 in the name of Jolene Higareda, with a balance of \$76,567.59.
- Bank of Utah certificate of deposit account # 1878065 in the name of Jolene Higareda,

with a balance of \$23,535.92.

WHEREAS, the United States caused to be published in *The Salt Lake Tribune*, a newspaper of general circulation, notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon Jolene Higareda and Santos Higareda; and

WHEREAS, a Settlement Agreement was entered into between the United States and Petitioner Santos Higareda and no other timely claim has been filed; and

WHEREAS, the Court finds that defendant(s) had an interest in the property that is subject to forfeiture pursuant to 21 U.S.C. § 853;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

- Real property located at 346 28th Street, Ogden, Utah, more particularly described as:

PARCEL 2: PART OF LOT 3, BLOCK 4, PLAT A, OGDEN CITY SURVEY:
BEGINNING AT A POINT 50 FEET EAST OF THE SOUTH WEST CORNER OF
SAID LOT 3, RUNNING THENCE EAST 35 FEET; THENCE NORTH 180 FEET,
THENCE WEST 35 FEET, THENCE SOUTH 180 FEET TO BEGINNING.
- United States currency seized from the downstairs bedroom, 346 28th Street, Ogden, Utah, in the amount of \$13,496.00.
- United States currency seized from the south bedroom, 346 28th Street, Ogden, Utah, in the amount of \$128,240.00.
- \$108,085.31 of \$118,085.31 in the Golden West Credit Union account #: 0000562116 in the names of Santos Higareda and Jolene Higareda.
- \$44,120.31 of the \$51,620.31 in the Golden West Credit Union account #: 0000691980 in the names of Jolene Higareda and Sergio Balli.
- Bank of Utah Account No. 1674811 in the name of Jolene Higareda, with a balance of \$76,567.59.

- Bank of Utah certificate of deposit account # 1878065 in the name of Jolene Higareda, with a balance of \$23,535.92.

is hereby forfeited to the United States of America pursuant to 21 U.S.C. § 853.

IT IS FURTHER ORDERED that the \$10,000 in the Golden West Credit Union account #: 0000562116 in the names of Santos Higareda and Jolene Higareda which has not been forfeited shall be returned to Santos Higareda as full satisfaction of her petition and claim as outlined in the Settlement Agreement between the United States and Santos Higareda.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law; and

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order

SO ORDERED; Dated this 20 day of October, 2006.

BY THE COURT:


TENA CAMPBELL, Judge
United States District Court

STEVEN B. KILLPACK, Federal Defender (#1808)
L. CLARK DONALDSON, Assistant Federal Defender (#4822)
UTAH FEDERAL DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Telefax: (801) 524-4060

FILED
DISTRICT COURT
2005 OCT 23 A 9:56

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT LLOYD ZESIGER, JR.

Defendant.

ORDER TO CONTINUE TRIAL

Case No.1:05CR079 DB

Based on motion of the defendant, stipulation of the government and good cause appearing;

IT IS HEREBY ORDERED that the trial previously scheduled for October 23, 2006 is continued to the 18 day of December, 2006 at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

Dated this 20 day of October, 2006.

BY THE COURT:


HONORABLE DEE BENSON
United States District Court Judge

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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARTIN HARO TRETO,

Defendant.

ORDER EXTENDING TIME FOR FILING
NOTICE OF APPEAL

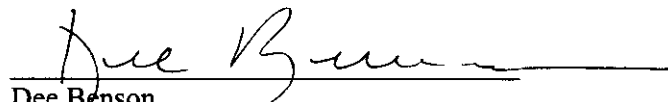
Case No. 1:05-CR-85 DB

Based on defendant's motion to extend time for filing notice of appeal, and good cause appearing,

IT IS HEREBY ORDERED that the time for defendant to file a notice of appeal in this matter is extended until October 11, 2006.

DATED this 20th day of October, 2006.

BY THE COURT:


Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	Case #: 1:06CR00041 DAK
vs.	:	ORDER OF FORFEITURE IN
SERGIO AGUILAR-DELAROSA,	:	SUPPLEMENT TO THE SENTENCE
Defendant.	:	AND JUDGMENT AS TO SERGIO
	:	AGUILAR-DELAROSA
	:	JUDGE Dale A. Kimball

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Counts 1 and 2 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, the defendant Sergio Aguilar-Delarosa shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. §§ 1546(a) and 2, including but not limited to:

- \$31,000.00 in U.S. Currency
- Real Property located at 668 24th Street, Ogden, Utah
- one HP Pavilion CPU Computer, Serial # MXM3380528
- one Samsung Syncmaster Computer Monitor, Serial # GG15HVEW801471X
- one HP PSC 2175 Printer/Scanner/Copier, Serial # MY36DC830K
- one Underwriter Laboratory PL4A Laminator, Serial # AEC152511
- one Brother SX4000 Typewriter, Serial # HOD932805

- one Computer Mouse
- one Computer Keyboard

2. The Court has determined that based on a guilty plea of Immigration/Residency/ Employment Document Fraud and Aggravated Identity Fraud, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment and the Clerk shall attach a copy of this Order to the Judgment in supplement to the sentence and judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 23rd day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is prominent, followed by "A." and then "Kimball". The signature is positioned above a horizontal line.

DALE A. KIMBALL, Judge
United States District Court

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DISTRICT COURT

OFFICE OF
JUDGE TENA CAMPBELL

3:09

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE GONZALO GARCIA-LLAMAS, aka
VICTOR HUGO VEGAS-ROSAS,

Defendant.

**ORDER ALLOWING WITHDRAWAL
OF COUNSEL**

Case No. 1:06 CR 86 TC

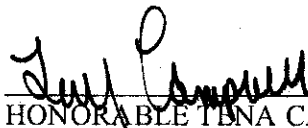
Honorable Tena Campbell

Based on motion of counsel, Carlos A. Garcia, and good cause shown;

IT IS HEREBY ORDERED that Carlos A. Garcia, Assistant Utah Federal Defender, is
granted leave to withdraw as counsel of record for defendant, Jose Gonzalo Garcia-Llamas.

DATED this 20 day of October, 2006.

BY THE COURT:



HONORABLE TENA CAMPBELL
United States District Court Judge

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U.S. DISTRICT COURT

OCT 20 2006

2006 OCT 20 P 4: 22

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Mark L. McCarty [6001]
Martha Knudson [8512]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

KATHLEEN SARIAH PERKINS,

Plaintiff,

v

SILVER MOUNTAIN SPORTS CLUB &
SPA, a limited liability company,

Defendant.

**ORDER GRANTING
MOTION TO AMEND COMPLAINT**

Case No. 1:06CV00023
Judge Bruce S. Jenkins

This matter came before the Court for hearing on Plaintiff's Motion to Amend the Complaint held October 2, 2006, before the Honorable Bruce S. Jenkins. Martha Knudson of RICHARDS BRANDT MILLER & NELSON appeared as counsel for Plaintiff, and Bastiaan K. Coebergh of WRONA & PARRISH appeared as counsel for Defendant.

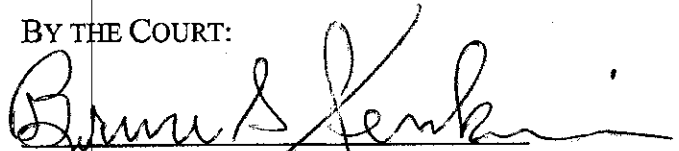
This Court, having heard supporting evidence and argument at the hearing and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff is permitted to file an amended

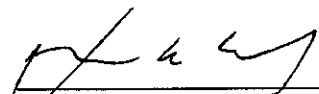
complaint in this matter. The proposed Amended Complaint attached as Exhibit "J" to Plaintiff's Memorandum in Support of Motion to Amend Complaint is hereby approved as filed with the Court. Defendant shall have ten (10) days from the date of this Order to file an answer or otherwise respond.

DATED this 20 day of October, 2006.

BY THE COURT:


The Honorable Bruce S. Jenkins
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Bastiaan K. Coebergh
WRONA & PARRISH, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October ⁴ 2006, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

· Joseph E. Wrona
Bastiaan K. Coebergh
WRONA & PARRISH, P.C.
1816 Prospector Avenue, Suite 100
Park City, UT 84060
Attorneys for Defendant

GAEDS\DOCS\16739\0001\198728.WPD

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

MICHAEL WEAVER

Plaintiff,

v.

STATE OF UTAH, CRAIG KEHL,
SHANNON KEHL, et al.,

Defendants.

ORDER DENYING MOTION TO
APPOINT COUNSEL AND DEEMING
MOOT MOTION TO PROCEED IN
FORMA PAUPERIS

Civil No. 1:06 cv 82 PGC

Judge Paul Cassell

Magistrate Judge Brooke C. Wells

Plaintiff, Michael Weaver *pro se*, has filed two Motions to Appoint Counsel¹ and a Motion for Leave to Proceed in forma pauperis.² As a civil litigant Mr. Weaver has no constitutional right to counsel.³ Because Mr. Weaver has no right to counsel and fails to convince the court that there is sufficient merit to his claim the court DENIES Mr. Weaver's Motion for Appointment of Counsel. Further, the court deems as MOOT Mr. Weaver's Motion for Leave to Proceed in forma pauperis because the court previously granted this same request.⁴

[28 U.S.C. § 1915](#), which pertains to proceedings in forma pauperis, provides that "The court may request an attorney to represent any person unable to afford counsel."⁵ The

¹ Docket nos. 4, 8.

² Docket no. 10.

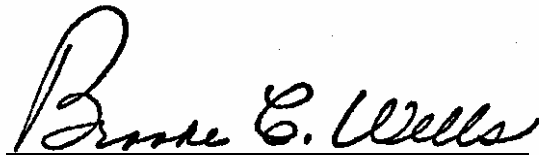
³ See [Moomchi v. Univ. of N.M.](#), 1995 WL 736292, *3 (10th Cir. 1995) (unpublished); [Carper v. DeLand](#), 54 F.3d 613, 616 (10th Cir. 1995); [Durre v. Dempsey](#), 869 F.2d 543, 547 (10th Cir. 1989).

⁴ Docket no. 2.

⁵ [28 U.S.C. § 1915\(e\)\(1\)](#).

appointment of counsel under this statute, however, is at the discretion of the court.⁶ “The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel.”⁷ When deciding whether to appoint counsel, a court should consider a variety of factors, “including ‘the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present his claims, and the complexity of the legal issues raised by the claims.’”⁸ In considering these factors, the court concludes that (1) it is not clear yet whether Plaintiff has asserted a colorable claim; (2) the issues involved are not complex; and (3) Plaintiff is not incapacitated or otherwise unable to adequately pursue this matter. Therefore, the court DENIES Mr. Weaver’s Motions for Appointment of Counsel. If this case is found to have merit, and if it appears that counsel will be needed, the court may ask an attorney to appear pro bono on his behalf.

DATED this 23rd day of October, 2006.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is fluid and cursive, with the first name "Brooke" being more prominent and the last name "Wells" following in a similar style.

Brooke C. Wells
United States Magistrate Judge

⁶ See [McCarthy v. Weinberg](#), 753 F.2d 836, 838 (10th Cir. 1985).

⁷ *Id.*

⁸ [Rucks v. Boergermann](#), 57 F.3d 978, 979 (10th Cir. 1995) (quoting [Williams v. Meese](#), 926 F.2d 994, 996 (10th Cir. 1991)).

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CLERK OF DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL

Jefferson W. Gross (Utah No. 8339)
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OF COUNSEL:

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[admitted pro hac vice]

Tacita A. Mikel Scott (Georgia No. 632283)

[admitted pro hac vice]

MORRIS, MANNING & MARTIN, LLP

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Atlanta, Georgia 30326

(404) 233-7000 (phone)

(404) 365-9532 (fax)

Attorneys for Gehrig H. White and
The Gehrig & Margaret White Charitable Foundation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MERRILL SCOTT & ASSOCIATES, LTD.,
MERRILL SCOTT & ASSOCIATES, INC.,
PHOENIX OVERSEAS ADVISERS, LTD.,
PATRICK M. BRODY,
DAVID E. ROSS II, and
MICHAEL G. LICOPANTIS,

Defendants.

Civil No. 2:02 CV-0039C

**ORDER GRANTING JOINT
MOTION FOR EXTENSION OF
TIME TO SUBMIT
SUPPLEMENTAL OBJECTION
TO THE SECURITIES AND
EXCHANGE COMMISSION'S
PROPOSED PLAN OF PARTIAL
DISTRIBUTION**


**Judge Tena Campbell
Magistrate Judge David Nuffer**

Pursuant to the stipulation of the parties and for good cause shown,

IT IS HEREBY ORDERED that the time for Gehrig White ("White") and The Gehrig and Margaret White Charitable Foundation (the "Foundation") (collectively, the "White Parties") to file a supplemental objection to the Securities and Exchange Commission's ("SEC") proposed Plan of Partial Distribution (the "Plan") is extended until a settlement between the White Parties and Receiver has been either approved or disapproved.

Dated this 20 day of oct, 2006.

BY THE COURT:


The Honorable Judge Tena Campbell
United States District Court for the
District of Utah

LOCAL COUNSEL
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Woodbury and Kesler, P.C.
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Salt Lake City, Utah 84111
Telephone: (801) 364-1100
Facsimile: (801) 359-2320

CO-COUNSEL
Elliott Cowan, Esquire
Brian Moffet, Esquire
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
233 East Redwood Street
Baltimore, Maryland 21202
Telephone: (410) 576-4108
Facsimile: (410) 576-4246

Attorneys for Stephen M. Serlin, M.D.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, *

PLAINTIFF,

vs.

MERRILL SCOTT & ASSOCIATES, LTD.,
MERRILL SCOTT & ASSOCIATES, INC.
PHOENIX OVERSEAS ADVISERS, LTD.
GIBRALTAR PERMANENTE ASSURANCE,
LTD., PATRICK M. BRODY, DAVID E.
ROSS II, and MICHAEL G. LICOPANTIS,

DEFENDANTS.

* **ORDER GRANTING**
* **JOINT STIPULATION AND**
* **MOTION FOR EXTENSION OF**
* **TIME TO SUBMIT**
* **SUPPLEMENTAL OBJECTION TO**
* **THE SECURITIES AND**
* **EXCHANGE COMMISSION'S**
* **PROPOSED PLAN OF PARTIAL**
* **DISTRIBUTION**

Civil Action No.:2:02 CV-0039C
Judge Tena Campbell
Magistrate Judge David Nuffer

Pursuant to the stipulation of the parties and for good cause shown,

IT IS HEREBY ORDERED that the time for Stephen M. Serlin, M.D. to file a

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OFFICE OF
JUDGE TENA CAMPBELL
DISTRICT OF UTAH
BY: DEPUTY CLERK

supplemental objection to the Securities and Exchange Commission's proposed Plan of Partial Distribution is extended until November 15, 2006.

Dated this 23 day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell", written over a horizontal line.

The Honorable Judge Tena Campbell
United States District Court for the
District of Utah

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**JENNIFER STEIMKE, as trustee of the
ODETTE GRAHAM TRUST, sole
beneficiary of the MICHELON FAMILY
TRUST, and sole devisee and
representative of the ESTATE OF
LYNDA STEIMKE MICHELON,**

Plaintiff,

vs.

JAE FORSCHEN, ET AL.,

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:03CV487DAK

This matter is before the court on Plaintiff Jennifer Steimke's motion for summary judgment against Defendant David Orr on her Seventeenth Claim for Relief alleging breach of fiduciary duty. The court held a hearing on the motion on October 4, 2006. Plaintiff was represented by David M. Wahlquist and Defendant represented himself pro se. The court has carefully considered all pleadings, memoranda, and other materials submitted by the parties. The court has further considered the law and facts relevant to the motions. Now being fully advised, the court enters the following Memorandum Decision and Order.

BACKGROUND

Plaintiff is the sole beneficiary of the Michelin Family Trust and the sole devisee of the Estate of Lynda Steimke Michelin. In the spring of 1999, Plaintiff's mother, Lynda Steimke Michelin, met Jae Forschen, who worked for World Contractual Services ("WCS"), and David Orr, the owner of WCS, at a booth at a financial planning seminar in Cancun, Mexico. Michelin

agreed to invest money with Forschen and/or WCS. Michelin invested \$100,000 from her individual retirement funds to create the Michelin Family Trust (“MFT”). The causes of action relating to the funds in that trust were dealt with in a prior order by this court.

WCS created the Charlotte Georges Trust and appointed Forschen and Orr as co-trustees of the trust. Orr gave Forschen his power of attorney to act on his behalf as co-trustee. Forschen directed Michelin to transfer \$53,500 from the Odette Graham Trust to him for deposit into the account of the Charlotte Georges Trust. Michelin sent Forschen a check in the amount of \$53,500.00 payable to Charlotte Georges Enterprises. After receiving the money, Forschen and Orr sent it overseas for investment in an account known as Hulaman, which was managed by Nolan Bush.

However, prior to the time the money was sent, the United States government had seized Hulaman’s funds and shut down the fund. Because the money was sent after the fund had been shut down, the money was lost. Orr undertook efforts to recover the money, but has not been successful. Plaintiff argues that sending this money to a fund that had been shut down was a breach of Defendants’ fiduciary duties as trustees of the Charlotte Georges Trust.

DISCUSSION

Plaintiff moves for summary judgment against Orr on the seventeenth claim for relief for breach of fiduciary duty. Orr was co-trustee of the Charlotte Georges Trust. Under Utah Code Ann. § 75-7-901(1), “a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.” *Id.* The prudent investor rule, set forth in Utah Code Ann. § 75-7-902(1), provides that “[a] trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.” To satisfy that standard, “the trustee shall

exercise reasonable care, skill and caution.” *Id.* “If a trustee is named on the basis of a trustee’s representations of special skills or expertise, he is under a duty to use those skills or expertise.” *Id.* § 75-7-901(1).

Orr argues that he gave Forschen only a limited power of attorney and that when the funds were transferred to Hulaman, Forschen signed his name without his authorization. Orr’s deposition testimony, however, was that Forschen had his power of attorney to sign for him as trustee on anything. Therefore, whether or not there is any legal significance to being a co-trustee rather than a trustee, Orr testified that Forschen could sign for him with respect to anything.

A party may not rely upon a subsequent affidavit to create an issue of fact unless there is a substantial likelihood that the deposition testimony was in error or the party can explain the basis for the contradictory testimony. *Webster v. Sill*, 675 P.2d 1170 (Utah 1983). Orr has not provided an explanation for the contradictions between his deposition testimony and his assertions for purposes of summary judgment. Therefore, the court bases its decision on the substance of Orr’s testimony from his deposition. Based on that testimony, Orr is liable for any activities performed by Forschen pursuant to Orr’s power of attorney. Accordingly, Plaintiff’s motion for summary judgment is granted. Plaintiff is entitled to \$53,500.00 plus interest and costs.

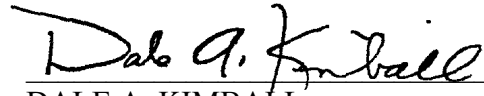
CONCLUSION

Based on the above reasoning, Plaintiff’s Motion for Summary Judgment against Orr on the Seventeenth Claim for Relief is GRANTED. The Clerk of Court is directed to enter judgment in favor of Plaintiff and against Defendant Orr in the amount of \$53,500.00 plus

interest and costs.

DATED this 23rd day of October, 2006.

BY THE COURT



DALE A. KIMBALL
United States District Judge

Alan L. Sullivan (3152)
Matthew L. Lalli (6105)
James D. Gardner (8798)
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Salt Lake City, UT 84101-1004
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Attorneys for Defendants Attorneys' Title Insurance
Fund and Attorneys' Title Insurance Fund, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

MARK D. ALBRIGHT, et al.,

Plaintiffs,

v.

ATTORNEYS' TITLE GUARANTY FUND,
INC., et al.,

Defendants.

**(PROPOSED) ORDER GRANTING
STIPULATED MOTION FOR
ENLARGMENT OF TIME WITHIN
WHICH TO FILE AN OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL
DISCOVERY OF INFORMATION
CLAIMED AS PRIVILEGED BY ATIF
AND COHEN FOX**

Case No. 2:03CV00517

Honorable Dee V. Benson
Magistrate Judge Samuel Alba

Based upon the stipulation of the parties and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendants Attorneys' Title Insurance Fund, Inc. and Attorneys' Title Insurance Fund may have an enlargement of time until October 24, 2006 to file and serve a memorandum in opposition to plaintiffs' motion to compel discovery of information claimed as privileged by the Florida Fund and the Cohen Fox defendants.

DATED this ²³23 day of October, 2006.

BY THE COURT:

A handwritten signature in dark ink, appearing to read 'Samuel Alba', written over a horizontal line.

Honorable ~~Dee V. Benson~~
Honorable Samuel Alba

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

LAURIE C. BARTUNEK,

Plaintiff,

vs.

FRED MEYER, INC.,

Defendant.

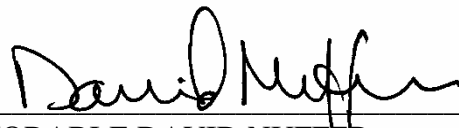
Case No. 2:04CV00593 DB

ORDER APPROVING STIPULATION
FOR EXTENSION OF TIME

Judge Dee Benson
Magistrate Judge: David Nuffer

Pursuant to the parties' Stipulation for Extension of Time, filed by the parties on October 20, 2006, the Court approves the stipulation for the extension of time for the defendant to respond to Plaintiff's Cross-Motion for Summary Judgment. Defendant's reply is due October 30, 2006.

Dated this 23rd day of October, 2006



HONORABLE DAVID NUFFER
U.S. DISTRICT COURT MAGISTRATE
JUDGE

APPROVED AS TO FORM:

/s/ D. Bruce Oliver

D. BRUCE OLIVER

ATTORNEY FOR PLAINTIFF

*(Signed Copy Of Document Bearing
Signature Of Other Attorney Is Being
Maintained In The Office Of The Filing
Attorney)*

CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2006, I electronically filed a true and correct copy of the foregoing ORDER APPROVING STIPULATION FOR EXTENSION OF TIME with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

David B. Oliver (E-Filer)
bruce@bruceoliverlaw.com pleadings@bruceoliverlaw.com,jason@bruceoliverlaw.com

W. MARK GAVRE
ANGIE NELSON
PARSONS BEHLE & LATIMER
ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 OCT 23 A 9:56

JON C. JONES,

Plaintiff,

vs.

THE WRIGHT TRAVEL AGENCY, INC.,

Defendant.

ORDER AND OPINION

Case No. 2:04-CV-724-DB

Judge Dee Benson

I. Introduction

This matter came before the Court for a three-day bench trial on July 18-20, 2006.

Plaintiff Jon C. Jones was represented by Patricia W. Christensen and Michael D. Black of the law firm of Parr Waddoups Gee & Loveless. Defendant Wright Travel Agency, Inc. was represented by Mark F. James and Kevin W. Bates of the law firm of Hatch, James & Dodge.

Having considered the pleadings submitted by the parties, the testimony of the witnesses, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

II. Background

Plaintiff Jon C. Jones owned and operated a travel agency, "Travel Zone," in Salt Lake City, Utah. Travel Zone was comprised of about 40 employees and sold personal and group vacation packages and arranged travel plans for local businesses. Pamela Wright is the founder, sole owner and President of Defendant Wright Travel Agency Inc., a travel agency headquartered in Nashville, Tennessee with approximately 20 locations across nine states. In early 2003, Ms. Wright contacted Mr. Jones through a broker in order to inquire about purchasing Travel Zone. Mr. Jones agreed to sell Travel Zone and the parties entered into an Asset Purchase Agreement in

June 2003. The Purchase Agreement stated that in consideration for acquiring the assets of Travel Zone, Wright Travel agreed to pay Mr. Jones \$200,000 plus 13% of the "revenues" that the Salt Lake office made over a 24-month period immediately following acquisition. In the months following the acquisition, however, revenues declined and many of the employees who had worked for Travel Zone prior to the acquisition either left or were terminated. Several customers who had been served by those employees left also. Because of Travel Zone's depressed revenues after its acquisition by Wright Travel, Mr. Jones' share in the revenues was much less than he anticipated. Mr. Jones brought suit to recover damages alleging that Wright Travel breached the Implied Covenant of Good Faith and Fair Dealing by intentionally mismanaging its Salt Lake office.

Wright Travel filed a counterclaim against Mr. Jones alleging that he breached the contract by failing to perform certain consulting duties after Travel Zone's acquisition.

III. Findings of Fact

1. Wright Travel and Travel Zone negotiated an Asset Purchase Agreement ("APA") and related documents pursuant to which Wright Travel purchased certain assets of the Travel Zone.
2. The APA was signed effective June 29, 2003.
3. Wright Travel paid Travel Zone a lump sum payment of \$200,000.00 at the closing. In addition, Wright Travel agreed to pay Mr. Jones 13% of Wright Travel's Revenues (a term defined in the APA) for the 24-month period following the acquisition.¹

¹With respect to group travel, the APA provided that Wright Travel would pay Mr. Jones 13% of Revenues booked within the 24-month period immediately following the acquisition, so long as the travel actually occurred within the 36-month period immediately following the acquisition.

4. At no time during the negotiations of the APA did the parties suggest or agree that either party would be guaranteed minimum payments or minimum earnings during the two-year earn out period following the acquisition
5. In addition to the APA, the parties entered into a Consulting Agreement under which Mr. Jones agreed to provided specific client-related services to the agency and its clients, on a commission basis, following the closing. Specifically, the Consulting Agreement provides that:

For two years beginning June 29, 2003 ("Effective Date"), Consultant shall provide (or cause Jon C. Jones to provide, as applicable) the following independent-contractor services to Company:

- (a) Contact the clients of Consultant's former travel agency, The Travel Zone, to announce the transition from Consultant to Company
 - (b) Assist Company to establish rapport with said clients.
 - (c) Be available as needed by Company to visit the largest of said clients during the first three months after the Effective Date at such times and places are mutually agreeable with Consultant and Company.
 - (d) Advise Company about said clients
 - (e) Solicit and secure new corporate, group, meeting, and incentive clients for the Company.
6. In discussions between Pam Wright and Mr. Jones prior to the closing, Pam Wright informed Mr. Jones that Wright Travel intended to ask all of the former employees of Travel Zone to sign non-compete agreements following the acquisition that would restrict employees' ability to provide travel services to or solicit travel service business from clients or former clients of Wright Travel for a period of one year after the employee's employment with Wright Travel had ended.
 7. Mr. Jones was opposed to non-compete agreements but determined to proceed with the closing.
 8. Pam Wright discussed with Mr. Jones on two or three occasions prior to the signing of

the APA that Mr. Jones would not be involved in the management of the Salt Lake office following the acquisition.

9. Following the closing, Pam Wright maintained much of the same management structure in place that had existed at the Travel Zone prior to the acquisition. Debbie Huddleston remained as manager of the corporate-travel division, Marcia Johnson as manager of the leisure-travel division, and Jan Beames as manager of the group-travel division. Pam Wright also frequently utilized Debbie Huddleston and Marcia Johnson as the on-site office manager.²
10. Soon after the closing, Pam Wright met with all of the employees of Wright Travel's Salt Lake office and explained Wright Travel's employment policies to them. Pam Wright asked the employees to sign Wright Travel's standard form employment agreement that contained a non-compete restriction. Employees were not required to sign the employment agreement, however, and were offered monetary incentives in the form of cash and airline tickets if they did sign.
11. Many of the employees in Wright Travel's Salt Lake City office signed the Wright Travel employment agreements containing the non-compete restrictions.
12. Pam Wright returned to Salt Lake City several times in July and August of 2003 to answer questions regarding policies and procedures and to address various issues relating to the transition. Mr. Jones and Pam Wright had discussed prior to the acquisition that certain administrative functions would be consolidated post-acquisition and some administrative positions in the Salt Lake office would be eliminated.

²Later, in March 2004, Wright Travel hired Jane Engle as the full-time office manager of the Salt Lake office. Prior to that time, Pam Wright had interviewed numerous candidates for the office manager position and had offered the position to Carrie Jenkins, a former employee, and then to Amy Mendoza, a current employee, but both of them declined.

13. During the month immediately following the acquisition, Wright Travel eliminated the human resources position in the Salt Lake office. Pam Wright asked Carrie Jenkins, who had been the HR director in the Salt Lake office, if she would remain with the agency in another position. Ms. Jenkins declined. Several months later, Pam Wright asked Ms. Jenkins to return and manage the Salt Lake office of Wright Travel. Ms. Jenkins again declined.
14. Wright Travel eventually transitioned accounting from the Salt Lake office to its Nashville, Tennessee headquarters and, in connection with that transition, several accounting positions in the Salt Lake office were eliminated.
15. Several employees who had not earned bonuses but expected to receive bonuses for the quarter ending June 2003 became upset. In addition, employees who earned bonuses received the bonus payment late.
16. Commencing with disgruntlement relating to bonuses not being paid, certain employees left their employment with what had become Wright Travel's Salt Lake City office.
17. Many of the employees at the Travel Zone were friends of Mr. Jones who had worked for the Travel Zone for many years. With Mr. Jones no longer playing a role in the management of the office, and the Salt Lake office having become a branch office of a larger company, Travel Zone agents started to leave. The effect was domino in nature and was contributed to by competitors in the industry who sought to hire away Travel Zone agents.
18. Eventually, every employee of the Travel Zone as of the date of the acquisition left their employment with the Salt Lake office of Wright Travel. The Wright Travel Salt Lake office was badly injured. As agents left, the remaining agents experienced difficulty

performing services for clients adequately, morale dropped as clients left the Salt Lake office to follow departing agents elsewhere, and, as a result, more agents left, other clients ceased using Wright Travel's Salt Lake City office, and business further declined.

19. Pam Wright recruited new agents for Wright Travel's Salt Lake office, and during the months following the acquisition, the Salt Lake office hired a variety of new agents. Because of problems the Salt Lake office was experiencing, it was difficult to hire new agents to work for the Salt Lake office.
20. Following the acquisition, Pam Wright made numerous visits to clients of Travel Zone in an effort to cultivate continuing and additional business from those clients for the Salt Lake Office of Travel Zone.
21. During the year following the acquisition, Pam Wright flew to Salt Lake City at least 17 times to encourage departing agents to stay, interview and hire new agents, and visit clients and seek new business. The majority of those visits occurred after August, 2003.
22. Pam Wright never instructed any employee not to solicit or attempt to obtain new group travel or other business for the Salt Lake office of Wright Travel. She encouraged and sought new group travel opportunities, new clients for the Salt Lake office, and more business for the office.
23. Since the acquisition, Pam Wright hired at least eleven new agents to replace agents who had left the employ of Wright Travel in Salt Lake City, in addition to hiring a new office manager in March, 2004.
24. Wright Travel continues to operate an office in Salt Lake City as of the date of the trial.
25. From the date of the acquisition to the present Wright Travel's Salt Lake City office has operated at an overall net loss of approximately \$150,000.

26. From the date of the acquisition to the present, Wright Travel has paid Mr. Jones and/or Travel Zone, Inc. over \$435,000.00.
27. Mr. Jones testified in his deposition taken in the case, and he acknowledged at trial, that he had no reason to believe Pam Wright did not want the Salt Lake office of Wright Travel to be as successful as possible. He further testified Pam Wright never said or did anything that caused him to believe that she did not want the Salt Lake office of Wright Travel to be as profitable as it could be. Mr. Jones further testified he was not aware of anything Wright Travel intentionally did to try to drive away employees that existed at the time of the closing. Mr. Jones also acknowledged that his economic interests and those of Wright Travel were aligned during the two-year period following the acquisition.
28. The atmosphere of the office changed after the acquisition and she left soon thereafter. Agents left and took a substantial amount of clients and business with them.
29. The acquisition was very difficult for many employees. The Travel Zone employees had been like family, and Mr. Jones was the glue that held them together. At the time Amy Mendoza left the office, while new agents had been hired, they were not well trained to use Worldspan software and although Wright Travel had sent two individuals to Salt Lake from other Wright Travel locations, the amount of time spent for the training was not sufficient.
30. None of the former Travel Zone employees testified or suggested that Pam Wright did not want the Salt Lake office to be successful or identified anything that would manifest bad faith.
31. The Salt Lake office was Pam Wright's tenth acquisition and by far the most difficult. She spent more time and effort in connection with this acquisition than with any other. Ms. Wright did not intend to "liquidate" or otherwise sell off the business or any aspect

thereof. Ms. Wright encouraged every aspect of the business. The economic interests of Wright Travel and Jon Jones were always aligned. Ms. Wright did not attempt to deprive Jon Jones of revenues or any other reasonable expectation he might have had.

33. Pam Wright did not want employees to leave and attempted to convince them to stay. She made several trips to Salt Lake City to attempt to convince agents who had announced they intended to leave not to leave.
36. At all relevant times the economic interests of Mr. Jones and Pam Wright were aligned in every material way.
37. Wright Travel did not act intentionally to cause agents to leave following the acquisition or to cause the revenue received by the Salt Lake office of Wright Travel to decline following the acquisition.
38. Wright Travel did not act in bad faith in requesting that its employees sign employment agreements that restricted their ability to provide travel services to and/or solicit travel service business from clients or former clients of Wright Travel for a period of one year after the employee's employment with Wright Travel had ended.
39. Wright Travel did not act in bad faith in paying bonuses to employees in accordance with the written bonus policy that was in place at Travel Zone at the time of closing and in not paying bonuses to employees who had failed to qualify under that written policy.
40. Wright Travel did not act in bad faith in not involving Mr. Jones in the management of the Salt Lake office following the acquisition.
41. Wright Travel did not act in bad faith in connection with its operations of its Salt Lake office following the acquisition.
42. Wright Travel did not act in a manner to intentionally deprive Mr. Jones of the benefits of the APA. Moreover, the conduct of Wright Travel that Mr. Jones primarily alleged as the

basis for his breach of implied covenant of good faith and fair dealing claim (having employees sign non-compete agreements; Mr. Jones not being involved in management following the acquisition; and not paying unearned bonuses) did not injure Mr. Jones' reasonable expectations. Mr. Jones knew prior to signing the APA that Wright Travel intended to ask employees to sign non-compete agreements; that he would not be involved in management following the acquisition; and that Wright Travel had no obligation to pay bonuses that were contrary to the bonus program Mr. Jones had represented.

43. Mr. Jones requested damages for breach of the implied covenant of good faith and fair dealing in the amount of \$337,545. Such damages were testified to by Mr. Jones' damage expert, Scott Kimber. Because Mr. Jones failed to carry his burden of establishing that Wright Travel intentionally deprived Mr. Jones of his reasonable expectations under the APA, Mr. Jones is not entitled to recover damages for his claim asserting breach of the implied covenant of good faith and fair dealing.
44. Mr. Jones claimed he was entitled to additional commissions in the amount of several thousand dollars from the Carpenter group trips to the Danube and to Kauai. In that regard, Mr. Jones claimed that Wright Travel improperly had deducted the commissions of its sales representative, Ernie Cummings, relating to those trips before calculating Mr. Jones' 13%. There was no evidence presented to show that those commissions should not have been deducted before his 13% share of revenues from those trips were calculated.
45. The APA's definition of "Revenues" with respect to group travel provides specifically that direct expenses will be deducted before calculating Mr. Jones' 13% of revenues in connection with group travel. Ernie Cummings' commission with respect to the trips to

Danube and Kauai was reasonably treated as a direct expense because, had those trips not occurred, Ernie Cummings would have received no such commission – the commissions were incurred as a direct result of the trips. Moreover, Travel Zone's bonus program provided that commissions should be deducted in connection with group travel before bonuses were calculated.

46. Pam Wright's understanding and intent was that the sales commissions would be deducted before Mr. Jones' 13% share of group travel revenues was calculated. There was no contrary evidence at trial.
47. There was no evidence of any amounts Mr. Jones claimed he should have received had the sales commissions not been deducted prior to calculating Mr. Jones' 13% share.
48. Mr. Jones also alleged that overtime and Pam Wright's expenses should not have been deducted in connection with the Carpenter trips to the Danube and Kauai before his share of Revenues were calculated. No evidence was introduced at trial regarding what expenses were deducted that allegedly should not have been or of Mr. Jones' damages therefrom. Such expenses were direct expenses associated with those trips and thus properly deducted.
49. Mr. Jones also acknowledged that if there were a business purpose associated with the expenses of Pam Wright in connection the trips, Ms. Wright's expenses would be properly deducted. Mr. Jones was not present on the Kauai trip, and the evidence presented at trial was that Pam Wright went on both of the Carpenter Company trips following the acquisition with the business purpose of assisting the trips and further seeking to build and establish the business relationship between Wright Travel and Jim Hardimon and the Carpenter Company. There was no contrary evidence.

50. Mr. Jones alleged certain payments were late in being made, claiming that the payments were made after the lawsuit was filed and thus were the result of Wright Travel's recognition that it had breached the APA. Mr. Jones referenced payments in connection with the Carpenter Company group trip to Kauai and Mr. Jones's May commission payment. Wright Travel did not receive payment from the Carpenter Company in connection with the trip to Kauai until September, 2004, and Mr. Jones received his share of revenues from that trip within 30 days following the calendar month in which Wright Travel had received/recognized payment, which was in accordance with the APA.
51. Regarding Mr. Jones' May commission payment, that payment was not made until July because Mr. Jones had requested to review the accounting for his May commission before that accounting was sent to Nashville for payment, and Mr. Jones' delay in connection with his review resulted in a delay in the accounting being sent to Nashville and thus a slight delay in payment. Moreover, and in any event, the commission payment was made before Mr. Jones filed and served his Complaint in this case and Mr. Jones accepted the payment.
52. Mr. Jones assisted with a group travel experience for The Coca Cola Company in connection with the Sundance Film Festival held in Park City and Salt Lake City, Utah in January 2004. In connection therewith, Mr. Jones used his personal vehicle. He also incurred expenses of approximately \$1,200 for which Wright Travel did not reimburse Mr. Jones.
53. The APA did not require Wright Travel to pay Mr. Jones for the use of his vehicle in carrying out his duties under the Consulting Agreement or to reimburse Mr. Jones for expenses he incurred in connection with discharging his obligations under the Consulting Agreement. Also, Mr. Jones' actions in relation to the Coca Cola group trip to the

Sundance Film Festival were made in an attempt to obtain additional work from the Coca Cola Company for himself in connection with the 2004 Olympics in Athens, Greece and the 2006 winter Olympics in Torino, Italy.

55. Regarding Jon Jones' obligations under the Consulting Agreement, Mr. Jones contacted the clients of the Travel Zone to announce the acquisition, advised Wright Travel about those clients, and assisted Wright Travel to establish rapport with those clients. Jon Jones was available to visit clients of the Travel Zone and made some efforts to solicit new clients.
56. Wright Travel failed to show that any of Jon Jones alleged breaches of the Consulting Agreement caused damage to Wright Travel, or to establish the amount of any such damages.

IV. Conclusions of Law

1. The Covenant of good faith and fair dealing prohibits a party to a contract from acting intentionally to frustrate the justified expectations of the other party. Eggett v. Wasatch Energy Corporation, 94 P.3d 193, 197 (Utah 2004); Oakwood Village LLC v. Albertsons, Inc., 104 P.3d 1226 (Utah 2004). "The court determines the 'purpose, intentions, and expectations' by considering the contract language and the course of dealings between and conduct of the parties." Id. at 42.
2. While a covenant of good faith and fair dealing inheres in almost every contract, some general principles limit the scope of the covenant:

First, the covenant cannot be read to establish new, independent rights or duties to which the parties did not agree ex ante. Second, this covenant cannot create rights and duties inconsistent with express contractual terms. Finally, [the Court] will not use this covenant to achieve an outcome in harmony with the court's sense of justice but inconsistent with the express terms of the applicable contract.

Id. at 45.

3. Wright Travel did not breach the implied covenant of good faith and fair dealing contained in any of the agreements at issue in this action.
4. In an attempt to support his breach of implied covenant of good faith and fair dealing claim, Mr. Jones criticized and took issue with primarily three decisions or actions taken by Wright Travel following the acquisition: (1) not involving Mr. Jones in the management of the agency following the acquisition; (2) asking employees to sign non-compete agreements following the acquisition; and (3) strictly enforcing the bonus program and not continuing Mr. Jones' practice of awarding bonuses even on occasions when employees had not met the criteria for receiving them. None of these decisions or actions support Mr. Jones' breach of implied covenant claim.
5. Both parties to the transaction of the APA were represented by independent counsel, and neither party agreed to or intended that the contract would contain minimum guaranteed payments to either party or that Wright Travel would be precluded from exercising its business judgment regarding management and operation of the Salt Lake office following the acquisition. The conduct and decisions of Wright Travel that Mr. Jones asserts as the basis for his breach of implied covenant claim fall well within the business judgment of Wright Travel.
6. Mr. Jones could not have had a reasonable expectation that Wright Travel would have done something different than it did based on the fact that Mr. Jones and Pam Wright had discussed the very actions Mr. Jones subsequently asserted as the basis for his breach of implied covenant claim prior to the closing and Wright Travel acted post-closing entirely consistent with those discussions.

7. Mr. Jones had no reasonable expectations at the time the APA was entered into that he would be involved in management of the business following the acquisition; that Wright Travel would not ask the employees to sign non-compete agreements; or that Wright Travel would not enforce the bonus plan in accordance with its terms as represented to Wright Travel in the APA. Absent justified expectations, there could be no breach of the implied covenant of good faith and fair dealing.
8. The fact that employees left Wright Travel following the acquisition and the fact that Wright Travel experienced a severe decline following an acquisition does not sustain a conclusion that Wright Travel failed to act in good faith. The evidence at trial established that, after August, 2003, Pam Wright continued to travel to Salt Lake City; Wright Travel continued to seek to hire (and did hire) new agents; client visits continued; and efforts were made to seek new business and operate the agency in an effort to continue the business. Bids were made for ongoing group travel, software licenses were renewed, Wright Travel entered into a new, long-term lease, and the agency continues to operate in Salt Lake City, even though the Salt Lake office has operated from the time of the acquisition through the date of trial at a net loss of approximately \$150,000.
8. Unless the interests of the “party exercising discretion pursuant to the contract diverge from the interests of the contractual venture, courts need not scrutinize the motivation behind that party’s exercise of business judgment. Self-interest ensures that the goal of profit maximization for the venture, not bad faith, guides the party’s decisions.” Interpublic Group of Companies, Inc. v. Fratarcangelo, 2002 WL 31682389 (S.D.N.Y. Nov. 26, 2002) at *14. “When the parties’ economic interests are aligned, a claim for breach of the implied covenant . . . ‘defies common sense and economic reality.’ Under such circumstances, no ‘reasonable trier of fact could conclude that [the defendant]

violated the implied covenant of good faith and fair dealing.” Id. at *15. The economic interests of Mr. Jones, Pam Wright, and Wright Travel were at all relevant times aligned.

9. Mr. Jones’ breach of implied covenant claim fails because the evidence does not support a finding that Wright Travel decided to “liquidate” its Salt Lake City office and thus the Court need not reach the question of whether “liquidation” of the agency in Salt Lake City following the acquisition, had that in fact occurred, would have been a breach of the implied covenant of good faith and fair dealing.
10. Mr. Jones failed to carry his burden of establishing that Wright Travel breached the implied covenant of good faith and fair dealing.
11. Mr. Jones is not entitled to be reimbursed for expenses he incurred in connection with the Coca-Cola group at the Sundance Film Festival in January 2004.
12. Neither the APA nor the Consulting Agreement requires Wright Travel to reimburse Mr. Jones for expenses he incurs in connection with discharging his duties under the Consulting Agreement.
13. Sales commissions to Ernie Cummings paid on income from Carpenter Company group trips to the Danube and Kauai, Pam Wright’s expenses relating to those trips, and overtime associated with those trips were properly deducted under the APA prior to calculating Mr. Jones’ 13% commissions for that group Revenue.
14. The APA provides that with respect to amounts due to Jon Jones deriving group travel revenue, the revenue is first decreased by “direct expenses” prior to the calculation of the amount due Mr. Jones.
15. Under the APA, “direct expenses” include commissions due to salesman paid on the revenue specifically received from group travel and that would not have been paid but for the generation of the revenue from the group travel.

16. Under the APA "direct expenses" include the expenses of an employee or officer of Wright Travel who participates in a group trip with a legitimate business purpose. A legitimate business purpose includes but is not limited to assisting with the group and/or attempting to secure future business from the group client. Overtime and Pam Wright's out-of-pocket expenses on the Danube and Kauai trips were properly deducted as direct expenses.
17. Mr. Jones failed to introduce any evidence at trial regarding the amounts he claimed were improperly deducted prior to calculating his share of revenues, and he failed to introduce any evidence as to the amount he claimed he was entitled to receive assuming Wright Travel improperly deducted overtime, Pam Wright's travel expenses, and/or Ernie Cummings' commissions and thus Mr. Jones failed to carry his burden with respect to those claims.
18. Wright Travel did not breach the APA by making payments to Mr. Jones that were untimely.
19. Mr. Jones failed to carry his burden of establishing that Wright Travel breached the APA.
20. Wright Travel has failed to carry its burden of establishing that Jon Jones breached the Consulting Agreement or any other obligations after Travel Zone's purchase.
21. Wright Travel has failed to carry its burden of establishing that Jon Jones breached the covenant of good faith and fair dealing.
22. Wright travel has failed to meet its burden to show that any of the alleged breaches of contract caused any damage to Wright Travel, or the amount of any such damages. Proof of damages requires the complaining party to prove two points – first, the fact of damages, and second, the amount of damages. Atkin Wright & Miles v. Mountain States

Tel. & tel. Co., 709 P.2d 330, 336 (Utah 1985). Damages must be proven with reasonable certainty, and the complainant must show that it suffered damage as a result of a breach. Sawyers v. FMA Leasing Co., 722 P.2d 773, 774 (Utah 1986); Cook Assocs. V. Warnick, 664 P.2d 1161, 1165 (Utah 1983). Wright travel has failed to show how any damage was caused by the alleged breaches of which it complains.

23. Neither Plaintiff nor Defendant is entitled to recover on their respective breach of contract claims. Nor is either party entitled to attorneys' fees or costs and expenses of this litigation.

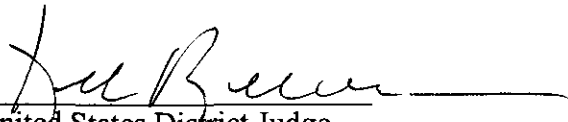
IV. Conclusion

This case involves an unfortunate business relationship made worse by litigation. Neither party provided sufficient evidence to prove its claims. The facts painted a picture of a business that was successful and harmonious under Mr. Jones' style of management and unsuccessful and unharmonious after the acquisition by Wright Travel. The relationship between Ms. Wright and Mr. Jones although optimistic at the outset, became strained and unproductive. In hindsight, if maximizing profits was the goal, the acquisition agreement was poorly structured and Wright Travel's management of its newly acquired Salt Lake City office was not a model of effective business practices. Lack of successful management, however, does not equal bad faith or intentional efforts to sabotage Mr. Jones' share of the profits. Nor do Mr. Jones' tepid efforts to consult equal bad faith or a breach of his contractual commitments. The seeds of discontent were sown in the agreement itself, the working relationship that developed between Mr. Jones and Ms. Wright, and the numerous poor management decisions made by Ms. Wright in connection with the Salt Lake City office. But none of these demonstrate beaches of the contract itself or the implied covenant of good faith and fair dealing. After all of the evidence was presented, it became clear this was an unfortunate business merger that had a negative effect on many people,

especially the former employees of the Travel Zone. But the Court finds no breaches of any legal obligations, and therefore, consistent with the findings and conclusions above, the Court grants judgment in favor of the Defendant as to Plaintiff's claims and judgment in favor of the Plaintiff as to Defendant's counter-claims, each party to bear its own costs and attorneys fees.

IT IS SO ORDERED.

Dated this 20th day of October, 2006.


United States District Judge
Dee Benson

D. GILBERT ATHAY (0143)
Lawyer for Defendant
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-7074

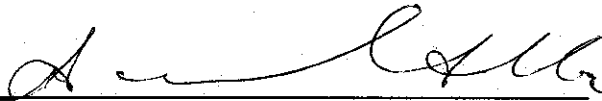
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ORDER PERMITTING INTERSTATE TRAVEL
vs.	:	
BASSAM OMAR,	:	Case No. 2:05CR00772
Defendant.	:	Judge Tena Campbell Magistrate Judge Samuel Alba

Based upon the motion of the defendant, Bassam Omar, through his lawyer, D. Gilbert Athay, stipulation of Robert Lunnien, Assistant United States Attorney and good cause appearing, it is hereby

ORDERED that the defendant, Mr. Bassam Omar be allowed to travel from San Diego, California to Raleigh, North Carolina November 20-26, 2006.

DATED this 23rd day of October, 2006.



Judge Samuel Alba
United States District Court

RECEIVED

D/UT 7/06 ORDER OF DISCHARGE AND DISMISSAL

RECEIVED CLERK

OCT 23 2006

OCT 12 2006
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
ROBERT BRAITHWAITE
U.S. MAGISTRATE
DISTRICT OF UTAH

UNITED STATES OF AMERICA

v.

ORDER OF DISCHARGE
AND DISMISSAL

ERICA R. PUTNAM

CASE NUMBER: 2:05-CR-00782-001

WHEREAS, the above-named defendant having previously been placed on probation under 18 U.S.C. § 3607 for a period not exceeding one year, and the Court having determined that said defendant has completed the period of probation without violation,

IT IS ORDERED that, pursuant to 18 U.S.C. § 3607(a), the Court, without entry of judgment, hereby discharges the defendant from probation and dismisses those proceedings for which probation had been ordered.



Robert T. Braithwaite
United States Magistrate Judge

10-23-06

Date

Frank A. Berardi #6833
Attorney for Defendant
16 West 700 South
Salt Lake City, Utah 84101
(801) 466-1266

FILED
IN DISTRICT COURT

2006 OCT 23 A 9:56

CLERK

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

THE UNITED STATES OF AMERICA
Plaintiff

Vs.

DAVID A. MORTENSEN
Defendant

ORDER FOR CONTINUANCE

CASE NO. 2:05CR00822 DB

JUDGE: DEE BENSON

BASED UPON the Motion for Continuance and being fully advised in the
premises, and good cause appearing to the court:

IT IS HEREBY ADJUDGED AND ORDERED:

That the above-entitled trial be continued until the 18 day of Dec, 2006. @ 8:30 AM

IT IS FURTHER ORDERED that the additional time for the continuance of trial
be, and hereby is, excluded for purposes of speedy trial pursuant to 18 U.S.C. §3161 (h)
(8) (A) & (B).

DATED this 20 day of October, 2006.

BY THE COURT:

Dee Benson
JUDGE: DEE BENSON

FILED
DISTRICT COURT
2006 OCT 23 A 9:48

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE ALFREDO LOPEZ-GUTIERREZ,

Defendant.

**ORDER TO
EXTEND DEFENDANT'S TIME TO
FILE REPLY MEMORANDUM IN
SUPPORT OF MOTION TO SUPPRESS**

Case No. 2:05CR-867TS

Based upon motion of defendant and good cause shown:

It is hereby ORDERED that defendant is granted an extension of time to file his Reply Memorandum in Support of Motion to Suppress, to October 27, 2006.

DATED this 20th day of October, 2006.

BY THE COURT:



HONORABLE TED STEWART
United States District Court Judge

Richard D. Burbidge (#0492)
Jefferson W. Gross (#8339)
Robert J. Shelby (#8319)
BURBIDGE & MITCHELL
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Telephone: (801) 355-6677
Facsimile: (801) 355-2341

FILED
U.S. DISTRICT COURT
RECEIVED
2006 OCT 20 P 3:09
DISTRICT OF UTAH
OCT 19 2006
OFFICE OF
JUDGE TENA CAMPBELL

Joseph A. Kelly (admitted *pro hac vice*)
Paula Kelly (admitted *pro hac vice*)
CARROLL, KELLY & MURPHY
One Turks Head Place, Ste. 400
Providence, Rhode Island 02903
Telephone: (401) 331-7272
Facsimile: (401) 331-4404

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RONALD D. RUSSO,

Plaintiff,

v.

BALLARD MEDICAL PRODUCTS,
KIMBERLY-CLARK WORLDWIDE,
INC., and KIMBERLY-CLARK
CORPORATION,

Defendants.

ORDER

Civil No. 2:05-CV-00059 TC

Hon. Tena Campbell
Magistrate Judge Paul M. Warner

Based upon the *ex parte* motion of Plaintiff Ronald D. Russo and good cause appearing
therefore,

IT IS HEREBY ORDERED that Plaintiff Ronald D. Russo may file an over length Memorandum in Opposition to Defendants' Motion *in Limine* to Limit Russo's Damages consisting of 18 pages, exclusive of the statement of facts.

DATED this the 20 day of October, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "Tena Campbell", written over a horizontal line.

Honorable Tena Campbell
United States District Court Judge

Margaret Niver McGann (7951)
David M. Bennion (5664)
Parson Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Fax: (801) 536-6111

Alan M. Anderson (*Admitted Pro Hac Vice*)
Christopher A. Young (*Admitted Pro Hac Vice*)
Fulbright & Jaworski L.L.P.
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112
Telephone: (612) 321-2800
Fax: (612) 321-9600

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BOSS INDUSTRIES, INC., AND JAMES
ATHERLEY

Plaintiffs,

v.

YAMAHA MOTOR CORPORATION USA,

Defendant.

YAMAHA MOTOR CORPORATION USA,

Counterclaimant,

v.

BOSS INDUSTRIES, INC. AND JAMES
ATHERLEY,

Counterclaim Defendants.

ORDER GRANTING PLAINTIFFS
BOSS INDUSTRIES, INC. AND
JAMES ATHERLEY'S UNOPPOSED
MOTION TO EXTEND TIME TO
FILE DISPOSITIVE MOTIONS

Case No. 2:05-CV-422 DAK

U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

Based upon Plaintiffs and Counterclaim Defendants Boss Industries, Inc. and James Atherley's (collectively "Boss") Unopposed Motion to Extend Time to File Dispositive Motions, the reasons and grounds set forth therein, and good cause shown,

IT IS HEREBY ORDERED that Boss' unopposed motion is GRANTED. Dispositive motions for all parties are due on or before October 23, 2006.

DATED this 23rd day of October, 2006.

BY THE COURT:


HONORABLE DALE A. KIMBALL
U.S. DISTRICT COURT

Tracy H. Fowler (1106)
Angela Stander (9623)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

William H. Shreve (*Admitted Pro Hac Vice*)
John B. Sganga, Jr. (*Admitted Pro Hac Vice*)
John F. Heal (*Admitted Pro Hac Vice*)
Sheila N. Swaroop (*Admitted Pro Hac Vice*)

**KNOBBE MARTENS OLSON
& BEAR L.L.P.**

2040 Main Street 14th Floor
Irvine, California 92614
Telephone: (949) 760-0404
Facsimile: (949) 760-9502

*Attorneys for Defendant and Counterclaimant
Yamaha Motor Corporation USA*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BOSS INDUSTRIES, INC.,

Plaintiff,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES
ATHERLEY,

Counterclaim Defendants

**~~PROPOSED~~ ORDER GRANTING
YAMAHA MOTOR CORPORATION
USA'S MOTION FOR ENLARGEMENT
OF TIME**

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball

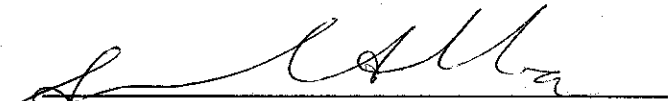
Magistrate Judge Samuel Alba

Having reviewed Defendant and Counterclaimant Yamaha Motor Corporation USA's Motion for Enlargement of Time to File Reply Memoranda in Support of Its Motion for Leave to Depose Toni Haikonen and Motion for Leave to Depose Dr. Peter Sundwall, Jr., and to Compel Un-Redacted Copies of Medical Records, and for good cause appearing,

IT IS HEREBY ORDERED that Yamaha's motion for enlargement of time is GRANTED. Yamaha shall be permitted up through and including October 27, 2006 to file its reply memoranda in support of its Motion for Leave to Depose Toni Haikonen and Motion for Leave to Depose Dr. Peter Sundwall, Jr., and to Compel Un-Redacted Copies of Medical Records.

DATED this 23rd day of October, 2006.

BY THE COURT:


Magistrate Judge Samuel Alba

417076

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

QWEST Plaintiff(s), vs. UTAH TELECOMMUNICATIONS OPEN INFRASTRUCTURE AGENCY, et al. Defendant(s).	ORDER FOR JUDICIAL SETTLEMENT CONFERENCE Case No: 2:05-CV-471 PGC District Judge Paul G. Cassell Magistrate Judge David Nuffer
---	--

Pursuant to the request of the parties, this case is set for a judicial settlement conference before the undersigned on Monday, November 6, 2006, from 9:00 a.m. through 5:00 p.m. in the ADR Suite, Room 405, at the U.S. Courthouse, 350 South Main Street, Salt Lake City, UT. *The parties are invited to suggest any changes necessary to this order.*

IT IS HEREBY ORDERED:

Participation of Parties: Each party or, in the case of an entity, a representative with full settlement authority, must be physically present and participate in the settlement conference for the entire time period. Counsel must also be present.

Case Status Submissions: Qwest shall make a case status submission on or before 10/26/06. UTOPIA shall make its case status submission on or before 11/2/06. Submissions shall be made directly to the Magistrate Judge at mj.nuffer@utd.uscourts.gov or Room 483, U.S. Courthouse, 350 South Main Street, Salt Lake City, UT 84101. The submissions shall include the following:

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded, and relief sought;
3. A brief statement of the facts and issues upon which the parties agree and a description of the major issues in dispute; a
4. A summary of relevant proceedings to date including rulings on motions and motions outstanding; and
5. A certification of counsel that all fact discovery has been completed.

Confidential Settlement Conference Statement: Parties shall separately submit their confidential settlement conference statements on or before 10/30/06, including:

1. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;
2. An estimate of the cost and time to be expended for further discovery, pretrial and trial;
3. Identification of any discrete issues which, if resolved, would aid in the settlement of the case; and
4. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands.

The **confidential settlement conference statement** should be delivered directly to the Magistrate Judge. Copies of the **confidential settlement conference statement** shall not be filed with the Clerk of the Court, nor served upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these **confidential settlement conference statements**.

Discussion with Client: In advance of the conference, counsel and clients should fully discuss the case status report, confidential settlement conference statement and settlement considerations.

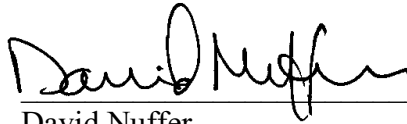
Role of Settlement Judge: The settlement judge will encourage communication among the parties and counsel; assist in identifying areas of agreement and disagreement; encourage resolution of issues; and, if possible, facilitate settlement of the case. The settlement judge will not order terms or conditions of settlement but may evaluate risks and advantages and recommend terms of settlement.

Confidentiality: No report of proceedings, including any statement made by a party, attorney, or other participants, in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission unless otherwise discoverable. Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the conference except as provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement conference process, except as required by law.

For questions related to the conference, counsel may contact Michelle Roybal, ADR Administrator, at 801 524 6128.

October 23, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

FILED
DISTRICT COURT
2006 OCT 23 A 9:57

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BASE TELECOM INC.,
Plaintiff / Counterclaim Defendant,

v.

NACT TELECOMMUNICATIONS,
INC., *et al.,*
Defendant / Counterclaim Plaintiff.

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR AN
EXTENSION OF TIME WITHIN WHICH
TO RESPOND TO DEFENDANTS'
MOTION TO COMPEL**

Case No. 2:05-CV-00659 DB

Judge Dee Benson

This matter comes before the Court on the unopposed motion filed by Plaintiff Base Telecom Inc. for an extension of time, up to and including November 10, 2006, within which to respond to the motion to compel filed by Defendants. Upon consideration of the foregoing motion and the circumstances of this case, and for good cause shown, the Court hereby grants the Plaintiff's unopposed motion. WHEREFORE, it is hereby ORDERED that Plaintiff may file its memorandum in opposition to Defendants' motion to compel up to and including November 10, 2006.

IT IS SO ORDERED this 10th day of October 2006.



DEE BENSON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, this 27th day of September 2006, I filed a copy of the foregoing proposed Order as an attachment to the motion to which it pertains, electronically with the Court using the CM/ECF system, which sent notice of this filing to the following counsel (who are designated as an E-Filers):

Phillip S. Ferguson, Esquire
Heidi G. Goebel, Esquire
Christensen & Jensen, P.C.
50 South Main Street, Suite 1500
Salt Lake City, UT 84144

/s/ Gregory W. Stevens
Gregory W. Stevens

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ELAINE CHAO,
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

KORY THURSTON and the MARKETING
SOLUTIONS INTERNATIONAL, INC., 401(K)
PLAN,

Defendants.

ORDER

CASE NO.:

2:05-CV-00828-BSJ

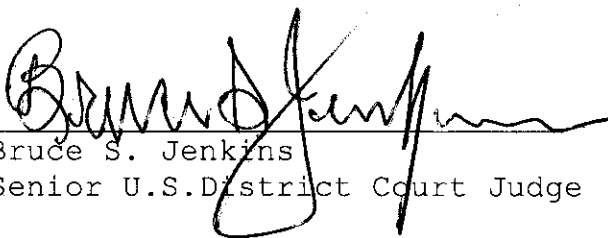
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OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

ORDER

The parties having filed a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a), and it being represented that all matters at issue having been resolved, now therefore it is:

ORDERED, that the above-captioned matter is hereby **DISMISSED**, with each party to bear their own respective fees and costs.


Bruce S. Jenkins
Senior U.S. District Court Judge

Dated: 10/10/06

FILED
U.S. DISTRICT COURT
2006 OCT 23 A 9:56

H. Dickson Burton (4004)
Krista Weber Powell (8019)
TRASKBRITT, PC
230 South 500 East, Suite 300
P.O. Box 2550
Salt Lake City, UT 84110
Telephone: (801) 532-1922

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>APOLLO LIGHT SYSTEMS, INC., a Utah corporation d/b/a APOLLO HEALTH,</p> <p>Plaintiff,</p> <p>v.</p> <p>THE LITEBOOK COMPANY, LTD. an Alberta, Canada corporation,</p> <p>Defendant.</p>	<p>STIPULATED REVISED SCHEDULING ORDER</p> <p>Case No. 2:05-CV-00958 DB</p> <p>Judge Dee Benson</p>
<p>THE LITEBOOK COMPANY, LTD. an Alberta, Canada corporation,</p> <p>Consolidated Plaintiff,</p> <p>v.</p> <p>APOLLO LIGHT SYSTEMS, INC., a Utah corporation d/b/a APOLLO HEALTH,</p> <p>Consolidated Defendant.</p>	<p>(consolidated case) Case No. 2:06-cv-00117-DB</p> <p>Judge Dee Benson</p>

Pursuant to Federal Rule of Civil Procedure 16(b), and good cause having been shown, the following matters as set forth in the Scheduling Order are hereby rescheduled. Only those

matters set-forth herein are revised by this Revised Scheduling Order. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|----|--|-------------|
| 3. | AMENDMENT OF PLEADINGS/ADDING PARTIES | <u>DATE</u> |
| a. | Last Day to File Motion to Amend Pleadings | 12/1/06 |
| b. | Last Day to File Motion to Add Parties | 12/1/06 |
| 4. | RULE 26(a)(2) REPORTS FROM EXPERTS | |
| a. | Plaintiff | 4/2/07 |
| b. | Defendant | 4/2/07 |
| c. | Counter Reports | 5/1/07 |
| 5. | OTHER DEADLINES | |
| a. | Discovery to be completed by: | |
| | Fact discovery | 2/23/07 |
| | Expert discovery | 6/1/07 |
| b. | Final date for supplementation of disclosures and discovery under Rule 26(e) | |
| c. | Deadline for filing dispositive or potentially dispositive motions | 6/15/07 |
| 7. | TRIAL AND PREPARATION FOR TRIAL: | |
| a. | Rule 26(a)(3) Pretrial Disclosures | |

Plaintiffs				7/9/07
Defendants				7/23/07
b.	Objections to Rule 26(a)(3) Disclosures			
c.	Special Attorney Conference on or before			8/6/07
d.	Settlement Conference on or before			
e.	Final Pretrial Conference	2:30 PM		8/21/07
f.	Trial	Length	Time	Date
i.	Bench Trial			
ii.	Jury Trial	10 days	8:30 AM	9/4/07

Dated this ____ day of October, 2006.

BY THE COURT:

Dee Benson

STIPULATED AND AGREED TO this 20th day of October, 2006.

TraskBritt

Jones, Waldo, Holbrook & McDonough

H. Dickson Burton
H. Dickson Burton
Attorney for Plaintiffs
Apollo Light Systems, Inc.
The Litebook Company, Ltd.

Timothy C. Haupt
Timothy C. Haupt
Andrew G. Deiss
Attorneys for Defendant

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FILED
U.S. DISTRICT COURT

OCT 19 2006

2006 OCT 20 P 3:09

OFFICE OF
JUDGE TENA CAMPBELL

STERLING A. BRENNAN, Utah State Bar No. 10060
TIGE KELLER, Utah State Bar No. 9110
WORKMAN NYDEGGER, P.C.
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
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ROBERT A. JOHNSON, California State Bar No. 155938*
ROBERT JOHNSON LAW CORPORATION
1201 Puerta Del Sol, Suite 205
San Clemente, CA 92673
Telephone: (949) 276-4216
Facsimile: (949) 534-9999
* *Admitted Pro Hac Vice*

Attorneys for Defendants and Counter-Claimants DENNIS KLINE,
SOURCE ONE MEDICAL, INC., RICK J. BALLARD, and DEREK
D. DOMAN and Defendants JASON R. EWERS and JAMIL L. HARRIS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ORBIT MEDICAL, INC., and ROBERT
N. GALLUP,

Plaintiffs,

vs.

DENNIS KLINE, SOURCE ONE
MEDICAL, INC., RICK J. BALLARD,
JASON R. EWERS, JAMIL L. HARRIS,
and DEREK D. DOMAN,

Defendants.

AND RELATED COUNTER-CLAIMS

~~PROPOSED~~ ORDER ON
DEFENDANT DENNIS KLINE'S
MOTION FOR PRELIMINARY
INJUNCTION
AND ORDER APPOINTING A
LIQUIDATOR

Civil No. 2:05cv1028 TC
Judge Tena Campbell

This matter came before the Court for oral argument on Wednesday, October 04, 2006, on Defendant and Counter-Claimant Dennis Kline's Motion for Preliminary Injunction.

The parties have agreed to the appointment of a neutral liquidator, which agreement resolves the pending motion. With respect to the appointment of a neutral liquidator, the Court ORDERS as follows:

1. Mr. Gil A. Miller of PRICEWATERHOUSECOOPERS, LLP, in Salt Lake City is appointed as the liquidator for the remaining dissolution of Source One Mobility, LLC ("Mobility"), subject to clearing PRICEWATERHOUSECOOPERS' internal conflicts and acceptance procedures.

2. Plaintiff Orbit Medical, Inc. ("Orbit") and Defendant Source One Medical, Inc. ("SOM") shall be equally responsible for any fees and costs incurred by Mr. Miller and his professionals as the liquidator. The Court reserves for a future date the question of whether fees and costs should be allocated differently.

3. As the liquidator of Mobility, Mr. Miller shall dissolve Mobility and conduct an investigative accounting in the manner set forth in (1) the Engagement Agreement entered into between PRICEWATERHOUSECOOPERS, Orbit and SOM, (2) any of PRICEWATERHOUSECOOPERS standard practices that are not included in the Engagement Agreement, (3) the settlement Agreement between the parties (effective date June 17, 2005) and any valid amendments or addendums thereto, and (4) Utah Code Ann. § 48-2c-1212 (entitled Receivership or custodianship). A true and correct of the Engagement Agreement is attached hereto as Exhibit A.

4. As the liquidator of Mobility, Mr. Miller shall conduct an investigative accounting from June 17, 2005, the effective date of the settlement Agreement between the parties, through the date of this Order to determine all cash, property and other assets received by the members of Mobility. If Mr. Miller believes that he needs to conduct an investigative accounting and/or obtain information or documentation relating to the period before June 17, 2005, he may do so.

5. At the conclusion of Mr. Miller's investigative accounting, Mr. Miller shall submit a report to the Court, with copies to the parties, setting forth his findings as the liquidator of Mobility.

6. PRICEWATERHOUSECOOPERS shall not be required to post a bond.

7. The parties are ordered to cooperate with Mr. Miller and provide him with copies of all requested documentation.

8. Robert N. Gallup agrees to provide Dennis Kline with backup details to the 2005 Mobility Draft Tax Return and 2005 Year End Financial Statements for Mobility in his possession on or before October 11, 2006 and 2006 Year to Date Financial Statements for Mobility, a current accounts receivables report for Mobility, an electronic copy of Mobility's financial accounting database, and copies of all Mobility bank and financial institution statements actually in his possession on or before October 18, 2006.

IT IS SO ORDERED.

DATED this 20 day of October, 2006.

A handwritten signature in black ink, appearing to read "Tena Campbell", is written over a horizontal line.

TENA CAMPBELL
Federal District Court Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

OCT 23 2006

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

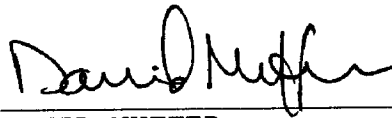
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THONGCHAY DUANYAI,)	
)	
Petitioner,	)	Case No. 2:05-CV-1053 DAK
)	
v.	)	District Judge Dale A. Kimball
)	
CLINTON FRIEL,	)	O R D E R
)	
Respondent.	)	Magistrate Judge David Nuffer

Petitioner, Thongchay Duanyai, has filed a *habeas corpus* petition.¹ IT IS HEREBY ORDERED that, by December 4, 2006, the Utah Attorney General must respond to the petition.

DATED this 21st day of October, 2006.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

¹See 28 U.S.C.S. § 2254 (2006).

United States District Court
for the
District of Utah
October 23, 2006

*****MAILING CERTIFICATE OF THE CLERK*****

RE: Thongchay Duanyai v Clinton Friel
2:05cv1053 DAK

Utah Attorney General
Criminal Appeals Division
160 East 300 South, 6th Floor
Salt Lake City, Ut 84114-0854

Inmate Thongchay Duanyai, #34411
Utah State Prison
PO Box 250
Draper, UT 84020

Kim Forsgren,

UNITED STATES DISTRICT COURT

Central

District of

FILED
U.S. DISTRICT COURT
Utah

UNITED STATES OF AMERICA

V.

LUIS DE LOS SANTOS RAMIREZ

JUDGMENT IN A CRIMINAL CASE 9:24

Case Number: DUTX206CR000192-001

USM Number: 13471-081

Henri Sisneros

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 2s of the Superseding Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(a)	Bank Robbery		2s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1s, 3s ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/18/2006

Date of Imposition of Judgment

Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

10/20/06

DEFENDANT: LUIS DE LOS SANTOS RAMIREZ
CASE NUMBER: DUTX206CR000192-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

57 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Arizona as possible to facilitate family visitation and a drug abuse treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LUIS DE LOS SANTOS RAMIREZ

CASE NUMBER: DUTX206CR000192-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: LUIS DE LOS SANTOS RAMIREZ
CASE NUMBER: DUTX206CR000192-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may

DEFENDANT: LUIS DE LOS SANTOS RAMIREZ
CASE NUMBER: DUTX206CR000192-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 53,950.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Key Bank Security	\$53,950.00	\$53,950.00	
Reference: 2006002592;2006012860;2006000635			
WA-31-05-0167			
PO Box 1816			
Tacoma, WA 98401			

TOTALS	\$ <u>53,950.00</u>	\$ <u>53,950.00</u>
--------	---------------------	---------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LUIS DE LOS SANTOS RAMIREZ
CASE NUMBER: DUTX206CR000192-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 54,050.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Special Assessment Fee of \$100 is due immediately. The Restitution of \$53,950. is due jointly and severally with co-defendant's and payable at a minimum rate of \$300 a month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Isaac Ibarra Mireles - 002
Jose Pepe Ramirez - 003

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

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OCT 18 2006

2006 OCT 23 A 9:30

OFFICE OF
JUDGE PAUL G. CASSELL

U.S. DISTRICT COURT

Prepared and submitted by:

BRETT L. TOLMAN, United States Attorney (#8821)
DARYL L. BELL, Special Assistant United States Attorney (#5375)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 531-5395

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,
vs.

ALEXANDER M. THEODORE

Defendant.

ORDER re: Expert Witnesses

Case Number 2:06cr00304-001 PGC

Based on a Stipulation of the parties IT IS HEREBY ORDERED that the expert reports in this matter be rescheduled as follows: Government's notice of expert witnesses and reports due on December 15, 2006. Defense notice of expert witnesses and report due January 15, 2007. Any challenges to expert witnesses due by February 5, 2007 and responses by February 19, 2007.

SIGNED BY MY HAND this 20th day of October 2006.

BY THE COURT:



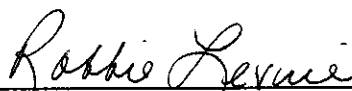
HONORABLE PAUL G. CASSELL
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October 2006, a true and correct copy of the foregoing proposed Order was mailed, first class postage prepaid, to the following address:

Ronald J. Yengich, Esq.
Attorney for Defendant
175 E 400 S #400
Salt Lake City, UT 84111

Mark Y. Hirata, Esq.
Assistant United States Attorney
185 S State #400
Salt Lake City, UT 84111



Robbie Levine, Paralegal
Criminal Division, Insurance Fraud Section
Utah Attorney General

RONALD FUJINO # 5387
Attorney for Defendant
356 East 900 South
Salt Lake City, Utah 84111
Telephone: (801) 268-6735
Fax: (801) 579-0606
counsel356@msn.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ISAAC MORALES-YSIDRO,

Defendant.

2:06-CR-00426 PGC

**ORDER CONTINUING TRIAL
SETTING**

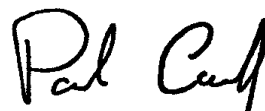
Judge Paul G. Cassell

Based upon Motion of the Defendant, Stipulation by the Government, and Good Cause appearing, the Court hereby ORDERS that the trial setting, currently scheduled for October 23, 2006, is continued and reset as a status conference to the following date: 11-08-2006 at 1:30 pm.

The Court finds that the best interest of the public and the defendant dictate the continuance, and therefore this time shall be excluded from the time allowed for the trial under the Speedy Trial Act, [18 U.S.C. § 3161](#).

ORDERED BY THE COURT

Dated this 23rd day of October, 2006.



U.S. DISTRICT COURT JUDGE
THE HONORABLE PAUL G. CASSELL

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

DARIO ORTIZ-GONZALEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000472-001

USM Number: 13762-081

Kristen Angelos

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/18/2006

Date of Imposition of Judgment



Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

10/20/06

DEFENDANT: DARIO ORTIZ-GONZALEZ
CASE NUMBER: DUTX206CR000472-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

57 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Victorville, Ca. as possible to facilitate family visitation and a drug treatment program if space is available.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DARIO ORTIZ-GONZALEZ
CASE NUMBER: DUTX206CR000472-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DARIO ORTIZ-GONZALEZ
CASE NUMBER: DUTX206CR000472-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: DARIO ORTIZ-GONZALEZ
CASE NUMBER: DUTX206CR000472-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DARIO ORTIZ-GONZALEZ
CASE NUMBER: DUTX206CR000472-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

RICHARD P. MAURO (5402)
Attorney for Defendant
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 363-9500

FILED
U.S. DISTRICT COURT
2006 OCT 20 P 3:55

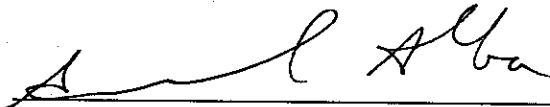
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	ORDER ALLOWING TRAVEL
Plaintiff,	:	
	:	
v.	:	Case No. 2:06CR00550
	:	
HENRY NGOC NGUYEN,	:	
	:	Judge Paul G. Cassell
Defendant.	:	Magistrate Judge Samuel Alba

Based upon the motion of the defendant, Henry Ngoc Nguyen, through his lawyer, Richard P. Mauro and good cause appearing, it is hereby

ORDERED that the defendant, Henry Ngoc Nguyen, be allowed to travel out of state
October 27-29, 2006.

DATED this 18th October, 2006.



Judge Samuel Alba
United States District Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WADE TYLER WARR,

Defendant.

ORDER TO TRANSFER CUSTODY

Case No. 2:06 CR00556 DB

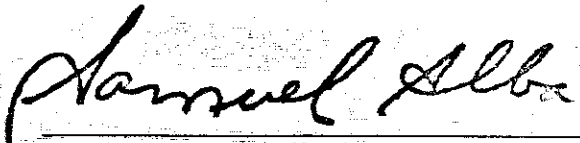
Chief Magistrate Judge Samuel Alba

Based on the motion filed by the defendant, and good cause appearing,

IT IS HEREBY ORDERED that the defendant's custody status be transferred from the Utah State Prison to the custody of the United States Marshals Service.

DATED this 22nd day of October, 2006.

BY THE COURT:



SAMUEL ALBA

Chief United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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DISTRICT COURT

OCT 16 2006

2006 OCT 23 P 3:17

OFFICE OF

JUDGE TENA CAMPBELL

ORDER TO CONTINUE
JURY TRIAL

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

SANDRA E. PRICE

Defendant.

Case No. 2:06 CR 562 TC

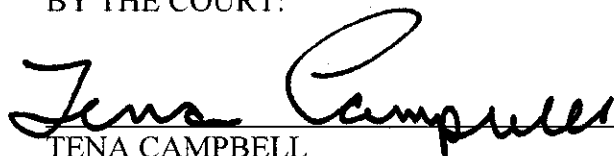
Based on the motion to continue the Jury Trial filed by defendant, Sandra E. Price, in the above-entitled case, and good cause appearing, it is hereby:

ORDERED

The Jury Trial previously scheduled on November 6, 2006, is hereby continued to the 21 day of February, 2007, at 830 a.m.. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 16 day of October, 2006.

BY THE COURT:


TENA CAMPBELL
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 OCT 23 A 9:48

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Case No.2:06 CR 575 TS

Plaintiff,

vs.

ORDER

JACK ROBINSON,

Defendant.

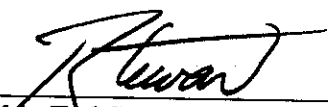
JUDGE TED STEWART

Based upon the United States' Motion for Court Appointed Guardian ad Litem Pursuant to 18 U.S.C. § 3509(h) and for good cause appearing:

IT IS HEREBY ORDERED:

A court-appointed guardian ad litem will be appointed to represent the minor victim in the above-captioned case.

Dated this 23rd day of October, 2006.


Honorable Ted Stewart
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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U.S. DISTRICT COURT
2006 OCT 23 A 9:48

UNITED STATES OF AMERICA

Plaintiff,

JACK A. ROBINSON

Defendant

ORDER FOR PSYCHOSEXUAL
EXAMINATION & TESTING

2:06-CR-00575-001-TS

It appears that psychosexual examination and testing of the defendant is necessary in order that a more complete presentence report may be prepared pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure.

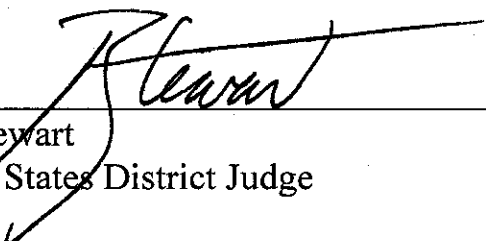
IT IS THEREFORE ORDERED that the defendant submit to an examination conducted by a qualified practitioner as directed by the Probation Office to provide information to the Court pursuant to 5 U.S.C. § 3109.

IT IS FURTHER ORDERED that investigative information may be released to the provider for purposes of testing and evaluation.

IT IS FURTHER ORDERED that the United States Probation Office shall pay all reasonable and necessary expenses from funds allocated for such purposes.

DATED this 23rd day of October, 2006.

BY THE COURT:



Ted Stewart
United States District Judge

STEVEN B. KILLPACK, Federal Defender (#1808)
L. CLARK DONALDSON, Assistant Federal Defender (#4822)
UTAH FEDERAL DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERALDO ANTONIO PLANELLS-
GUERRA,

Defendant.

**ORDER TO CONTINUE MOTION CUT-
OFF DATE**

Case No.2:06CR617 PGC

Based upon the motion of the Defendant, Geraldo Antonio Planells-Guerra, by and through his attorney of record, L. Clark Donaldson, and the stipulation of the United States, represented by Adam S. Elggren, the Court hereby continues nunc pro tunc the motion cut-off date currently set for October 18, 2006 is continued to the 27th day of October, 2006,

Dated this 23rd day of October, 2006.

BY THE COURT:



HONORABLE PAUL G. CASSELL
United States District Court Judge

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U.S. DISTRICT COURT

OCT 18 2006

2006 OCT 23 P 2:35

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

Joel R. Votaw and Jaime Votaw, for and on
behalf of themselves and for all persons
similarly situated

Plaintiffs,

v.

Countrywide Home Loans Servicing L.P., a
limited partnership; Countrywide Home
Loans, Inc., a corporation; Litton Loan
Servicing L.P., a limited partnership; The CIT
Group/Consumer Finance, Inc., a corporation;
And John Doe Lenders 1 through 5,

Defendants.

Case No. 2:06-cv-00036-BSJ

Hon. Bruce S. Jenkins

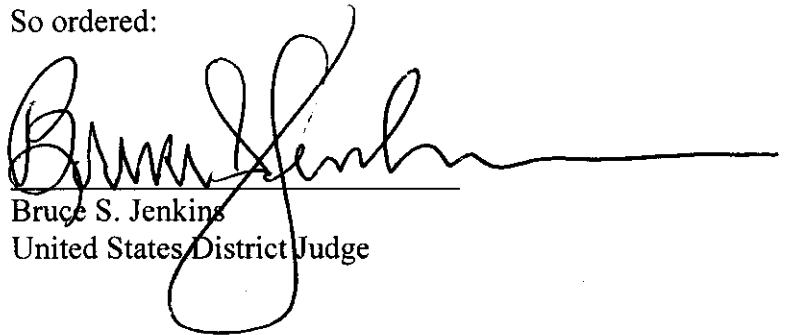
~~PROPOSED~~ ORDER OF DISMISSAL AS TO LITTON LOAN SERVICING LP

Before the Court is the Joint Motion of Dismissal as to Claims Against Litton Loan Servicing LP ("Litton") filed by plaintiffs and Litton on October 18th, 2006. After consideration of said Motion, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is GRANTED. The claims of the named Plaintiffs in this action against Litton are hereby DISMISSED WITH

PREJUDICE. The claims asserted on behalf of the putative class members against Litton are hereby DISMISSED WITHOUT PREJUDICE. Each party shall bear its own costs and expenses, including attorneys' fees (except to the extent set forth in the Settlement Agreement between Litton and plaintiffs dated October 16th, 2006) and waive any rights of appeal.

DONE this 23 day of October, 2006.

So ordered:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bruce S. Jenkins
United States District Judge

Prepared by:

Kathleen M. Liuzzi, #7924
Susan Black Dunn, #03784
DUNN & DUNN, P.C.
505 East 200 South, 2nd Floor
Salt Lake City, Utah 84102
Telephone: (801) 521-6677
Facsimile: (801) 521-9998
Attorneys for Defendants

RECEIVED
FILED
OCT 13 2006
RECEIVED CLERK
OCT 20 2006
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION**

ANTHONY W. DAWE, an individual,

Plaintiff,

v.

JORY PROVSTGAARD, an individual;
UTAH COUNTY SHERIFF'S
DEPARTMENT; THE COUNTY OF UTAH;
and DOES 1-50, inclusive,

Defendants.

ORDER

Case No. 2:06CV00083 BSJ
Judge Bruce S. Jenkins

This matter came before the Court on September 20, 2006 at a hearing on Defendant Jory Provstgaard's Motion for Summary Judgment. In attendance were Kathleen M. Liuzzi, representing Defendant, Jory Provstgaard, and Daniel Hunter IV representing Plaintiff, Anthony W. Dawe. After hearing oral argument, and based on the pleadings and documents filed herein by both parties, the Court finds as follows:

UNDISPUTED MATERIAL FACTS

On May 2, 2005, in Saratoga Springs, Utah, Deputy Provstgaard of the Utah County Sheriff's Department radared Mr. Dawe as speeding and attempted to stop him by following him for three and one-half miles at approximately 60 miles per hour with the lights and sirens activated on his patrol car. Mr. Dawe did not stop until Deputy Beeder, who responded to Deputy Provstgaard's call for backup along with Deputy Harris, was able to signal Mr. Dawe to pull over. Based on Mr. Dawe's behavior thus far, it was reasonable for Deputy Provstgaard to believe that Mr. Dawe was taking evasive action.

When Mr. Dawe exited his vehicle, Deputy Provstgaard noticed a knife clipped to his pocket in plain view and handcuffed Mr. Dawe and his passenger, Mr. Eggen, for officer safety. Once Deputy Provstgaard removed the knife from Mr. Dawe, determined the identity of Mr. Dawe and Mr. Eggen, determined that there were no immediately accessible weapons, and ran a computer check for warrants, their handcuffs were removed. Deputy Provstgaard accepted Mr. Dawe's explanation that he just did not see him and gave Mr. Dawe a citation for speeding only.

PROCEDURAL HISTORY

Subsequently, Mr. Dawe filed a 42 U.S.C. § 1983 lawsuit against Deputy Provstgaard, the Utah County Sheriff's Department, and Utah County, alleging excessive force and illegal search and seizure. The claims against the Utah County Sheriff's Department and Utah County were dismissed earlier in this lawsuit. (See Order dated April 7, 2006.) Deputy Provstgaard filed a Motion for Summary Judgment on May 25, 2006 seeking dismissal of the claims remaining against him. Mr. Dawe failed to oppose the Motion for Summary Judgment, in accordance with Fed.R.Civ.P. 56, by disputing any of the material facts offered by Deputy Provstgaard or by filing

an opposing memorandum containing any substantive legal theories. Instead, Mr. Dawe simply filed the Affidavit of Anthony Dawe, Jr., which did not dispute any material fact set forth by Deputy Provstgaard in his supporting memorandum. The day before the hearing, Mr. Dawe's counsel and paralegal each filed an affidavit stating that Deputy Provstgaard's motion for summary judgment was never received at their office and therefore, Mr. Dawe was unable to respond to Deputy Provstgaard's motion. Mr. Dawe cannot deny that he was on notice that a motion for summary judgment had been filed since he was informed as early as June 21, 2006 that a hearing date had been set.

HEARING

At the hearing, the Court examined the claims against Jory Provstgaard. The Court discussed the facts in depth with Plaintiff's counsel during oral argument and gave counsel the opportunity to review each material fact presented by Deputy Provstgaard as well as the opportunity to dispute each fact.¹ However, Plaintiff was unable to produce any evidence to dispute the material facts offered by Deputy Provstgaard. Based on Mr. Dawe's procedural and substantive deficiencies, this Court concludes that there is insufficient evidence to warrant sending the matter to a jury.

CONCLUSION

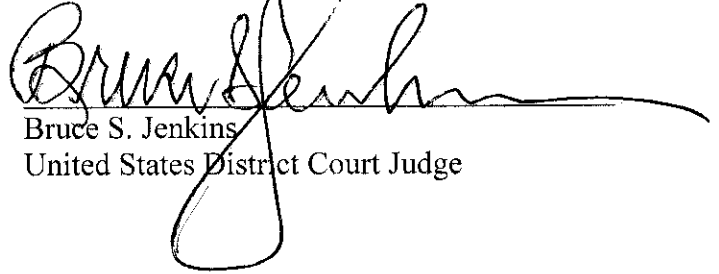
Deputy Provstgaard's Motion for Summary Judgment is hereby GRANTED and all claims against Deputy Provstgaard are dismissed, with prejudice.

¹ Plaintiff also complained of bruises to his wrists resulting from the use of handcuffs but offered no evidence to show that he sustained such an injury.

2:06-cv-0083 J

DATED this 20 day of October 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Bruce S. Jenkins
United States District Court Judge

Douglas L. Davies (*admitted pro hac vice*)
LANE POWELL PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101-2338
Telephone: (206) 223-7000
Facsimile: (206) 223-7107
Email: daviesd@lanepowell.com

Attorneys for Defendant Deutsche Bank
National Trust Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MARIAN PAUL,

Plaintiff,

v.

AMERIQUEST MORTGAGE COMPANY
AND DEUTSCHE BANK NATIONAL
TRUST COMPANY,

Defendants.

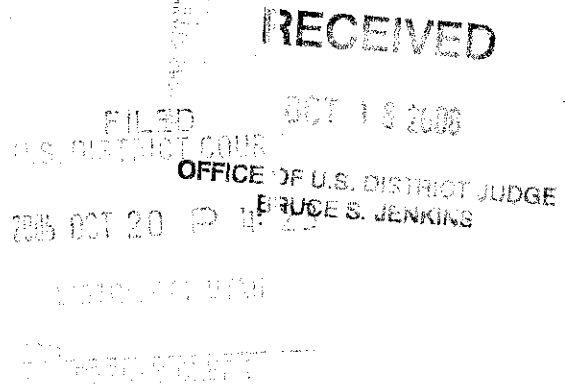
Case No. 2:06-CV-00091

**STIPULATION AND ORDER
DISMISSING ALL CLAIMS
AGAINST DEUTSCHE BANK
WITH PREJUDICE**

Honorable Bruce S. Jenkins

STIPULATION

IT IS STIPULATED by and between the parties hereto that all claims asserted by plaintiff against defendant DEUTSCHE BANK NATIONAL TRUST COMPANY may be dismissed with prejudice and without costs. This stipulation is based upon the representation by DEUTSCHE BANK NATIONAL TRUST COMPANY and the agreement of the parties as affirmed at paragraph 26 of Plaintiff's Complaint that DEUTSCHE BANK NATIONAL TRUST COMPANY is the trustee of the ABFC Mortgage Loan Asset Backed Certificates Series Trust under the Pooling and Service Agreement dated June 1, 2005.



DATED: Oct 17, 2006.

LANE POWELL PC

By [Signature]
Douglas L. Davies, Pro Hac Vice
Attorneys for Defendant
Deutsche Bank National Trust Company

CRIPPEN & CLINE L.C.

By [Signature]
Russell A. Cline (4298)
Attorneys for Plaintiff
Marian Paul

ORDER

The parties having stipulated that all claims asserted by plaintiff against defendant DEUTSCHE BANK NATIONAL TRUST COMPANY may be dismissed with prejudice and without costs, and the Court being fully advised in the premises; NOW THEREFORE

IT IS ORDERED that all claims asserted by plaintiff against defendant DEUTSCHE BANK NATIONAL TRUST COMPANY be and hereby are dismissed with prejudice and without costs.

DATED: 10/20/, 2006.

[Signature]
Honorable Bruce S. Jenkins
United States District Court Judge

Presented by:

LANE POWELL P.C.

By 

Douglas L. Davies (admitted *Pro Hac Vice*)
Attorneys for Defendant
Deutsche Bank National Trust Company

Copy Received; Approval as to Form;
Notice of Presentation Waived:

CRIPPEN & CLINE L.C.

By 

Russell A. Cline (4298)
Attorneys for Plaintiff
Marian Paul

Raymond J. Etcheverry (1010)
Kent O. Roche (2783)
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Marc J. Sonnenfeld
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Attorneys for Defendants

FILED
U.S. DISTRICT COURT
2006 OCT 20 P 3:55

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

IN RE NATURE'S SUNSHINE
PRODUCTS SECURITIES LITIGATION,

This Document relates to: All Actions.

ORDER

Master File No. 2:06cv00267 TS

(Consolidated with 2:06cv00287 DB,
2:06cv00311 DAK, 2:06cv00350 BSJ and
2:06cv00442 DB)

Judge Ted Stewart

Magistrate Judge Samuel Alba

On October 11, 2006, at 9:30 a.m., plaintiffs' Motion for Partial Lifting of the PSLRA Discovery Stay ("Motion to Lift Discovery Stay") and defendants' Motion to Vacate Order Enlarging Time to File a Consolidated Amended Complaint ("Motion to Vacate") came on for

hearing before the Court, with the Honorable Samuel Alba, Magistrate Judge, presiding. Plaintiffs were represented at the hearing by Lawrence M. Rosen of The Rosen Law Firm, P.A. and Mark F. James of Hatch, James & Dodge. Defendants (other than Daren G. Hogge) were represented by Raymond J. Etcheverry and Kent O. Roche of Parsons Behle & Latimer and Marc J. Sonnenfeld of Morgan, Lewis and Bockius LLP. Defendant Daren G. Hogge was represented by Jennifer A. James of Clyde Snow Sessions & Swenson.

The Court, having reviewed the memoranda, declarations, and exhibits filed in support of and in opposition to the Motion to Lift Discovery Stay and the Motion to Vacate, having heard oral argument from counsel, and having issued a bench ruling at the conclusion of the hearing, and being fully advised in the premises,

HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

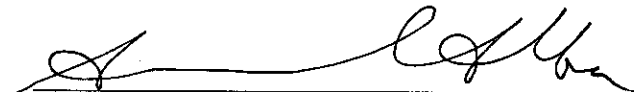
1. Except as noted below in Paragraph 2, the Motion to Lift Discovery Stay is denied on the ground that plaintiffs have failed to demonstrate, as required by the applicable provision of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C.A. § 78u-4(b)(3)(B), that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to plaintiffs.

2. Plaintiffs are granted leave to serve a document preservation subpoena (clearly labeled as such) on the accounting firm of KPMG for the limited purpose of putting KPMG on notice of this action and requiring KPMG to preserve any documents relevant to the allegations of plaintiffs' Complaint. The subpoena should clearly state that KPMG's only obligation under the subpoena is to preserve relevant documents and that KPMG should not produce any documents to plaintiffs unless and until the Court enters an Order lifting the stay completely or modifying it so as to permit plaintiffs to receive the subpoenaed documents from KPMG.

3. The Motion to Vacate is granted, and the Court's Order Enlarging Time to File a Consolidated Amended Complaint, dated September 21, 2006 (Docket No. 70), is modified such that plaintiffs' Consolidated Amended Complaint is now due on or before November 3, 2006.

DATED this 28th day of October, 2006.

BY THE COURT:



Honorable Samuel Alba
United States Magistrate Judge

APPROVED AS TO FORM:

HATCH, JAMES & DODGE, P.C.

/s/ Mark F. James

(Signed by filing attorney with counsel's permission)

Brent O. Hatch

Mark F. James

Gary A. Dodge

Liaison Counsel for Plaintiffs

PARSONS BEHLE & LATIMER

/s/ Raymond J. Etcheverry

Raymond J. Etcheverry

Kent O. Roche

Erik A. Christiansen

Attorneys for Defendants (except Daren G. Hogge)

CLYDE SNOW SESSIONS & SWENSON

/s/ Jennifer A. James

(Signed by filing attorney with counsel's permission)

Rodney G. Snow

Jennifer A. James

Attorneys for Defendant Daren G. Hogge

CERTIFICATE OF SERVICE

On this day 13th day of October, 2006, I hereby certify that a true and correct copy of the foregoing proposed **ORDER** was served by CM/ECF on all counsel who have enrolled to receive electronic service in this case, including but not limited to the following counsel for the Lead Plaintiffs:

Phillip Kim
Laurence M. Rosen
THE ROSEN LAW FIRM, P.A.
350 Fifth Avenue, Suite 5508
New York, New York 10118
Telephone: (212) 686-1060
Facsimile: (212) 202-3827

Brent O. Hatch
Mark F. James
Gary A. Dodge
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

/s/ Raymond J. Etcheverry

FILED
DISTRICT COURT

2006 OCT 23 A 9:48

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CHAD K. CALVERT,

Plaintiff,

v.

SMITH'S FOOD & DRUG CENTERS, INC.

Defendant.

AMENDED ORDER

Jury Demanded

Civil No. : 2-06-CV-00299 TS

Judge: Hon. Ted Stewart


THE COURT, upon reviewing the parties stipulated motion to substitute Smith's Food & Drug Centers, Inc. ("Smith's") for Defendant Kroger Group Cooperative, Inc., and upon considering the representations of the parties' respective counsel that Smith's is the proper defendant in this litigation,

HEREBY ORDERS that the clerk shall:

DISMISS the Defendant Kroger, without prejudice, from the pending litigation and shall ADD Smith's as the proper defendant to the claims and defenses at issue in this case. Counsel for Kroger, Steven C. Bednar and Tyson B. Snow, will serve as counsel for and accept service on behalf of Smith's. The Court further ORDERS that all pleadings previously filed in this litigation on behalf of Kroger are deemed to have been filed on behalf of Smith's and the dates and deadlines in the Attorneys' Planning Meeting Report and the Proposed Scheduling Order submitted by Kroger remain

UNCHANGED.

DATED this 28th day of October, 2006



The Hon. Ted Stewart
U.S. District Court Judge

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PRESTON SCOTT WALLACE,)	
)	
Plaintiff,	)	Case No. 2:06-CV-339 TC
)	
v.	)	District Judge Tena Campbell
)	
SCOTT V. CARVER et al.,	)	O R D E R
)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, Preston Scott Wallace, filed a *pro se* prisoner civil rights complaint.¹ The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.² Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."³ Under this formula, Plaintiff must pay \$28.57. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee,

¹See 42 U.S.C.S. § 1983 (2006).

²See 28 *id.* § 1915(b) (1).

³*Id.*

the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$28.57 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

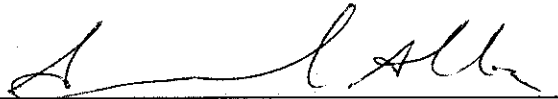
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of

fees and submit it to the inmate funds accounting office at Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', written over a horizontal line.

SAMUEL ALBA
U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Preston Scott Wallace (Case No. 2:06-CV-339 TC), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Preston Scott Wallace, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$28.57, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

Signature of Inmate
Preston Scott Wallace

JONI J. JONES (7562)
SCOTT D. CHENEY (6198)
Assistant Utah Attorneys General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

FILED
U.S. DISTRICT COURT

2006 OCT 23 A 9:56

CLERK OF COURT

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ACCURATE LENDING, et al

Plaintiff[s],

vs.

STATE OF UTAH, DEPARTMENT
OF COMMERCE, DIVISION OF
REAL ESTATE, et al

Defendants

: **ORDER GRANTING JOINT**
: **MOTION TO STAY PROCEEDINGS**

:

: Case No. 2:06-CV-375

: Judge Dee Benson
: Magistrate Judge Samuel Alba

:

Based upon the Joint Stipulation and Motion to Stay Proceedings, and good cause appearing,

THE COURT HEREBY ORDERS AS FOLLOWS:

1. All proceedings in this case are stayed pending completion of formal non-binding mediation between the parties which shall occur upon the selection of a mutually agreeable mediator and at a time mutually convenient between the parties;

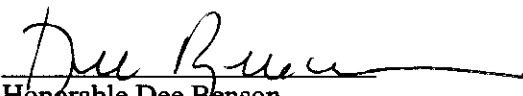
2. If the parties are unable to reach a compromise of their respective claims in the outstanding dispute, then the parties shall file an attorney planning meeting report pursuant to Rule 26 of the Federal Rules of civil Procedure, within 20 days after the completion of the mediation and/or written notice to counsel that the parties cannot reach a compromise; whichever occurs first;

3. The attorney planning meeting report shall authorize and include deadlines for (a) Plaintiffs to file a second amended complaint and (b) for Defendants to answer the second amended complaint; and

4. The Defendants shall not be required to respond to Plaintiffs' amended complaint on file (docket no. 32) or any second amended complaint until after the parties have completed the mediation and/or filed an attorneys planning meeting report as described in paragraphs 2 and 3 above.

Dated this 20th day of October 2006.

BY THE COURT


Honorable Dee Benson
U.S. District Court Judge

APPROVED AS TO FORM
AND CONTENT:

/s/ Mark R. Gaylord
*(Signed copy of document bearing signature of
Other Attorney is being maintained in the office
of the Filing Attorney)*
Mark R. Gaylord
Jason D. Boren
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ANITA L. SAVAGE,

Plaintiff,

vs.

**EXPERIAN INFORMATION
SOLUTIONS, INC.,**

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:06CV391DAK

This matter is before the court on Defendant Experian Information Solutions, Inc.’s Motion for Judgment on the Pleadings. The court concludes that a hearing would not significantly aid in its determination of the motion. Accordingly, based upon the memoranda submitted by the parties and the law and facts relating to the motion, the court renders the following Memorandum Decision and Order.

BACKGROUND

Plaintiff filed this action alleging claims against Experian for violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681, and intentional infliction of emotional distress. Plaintiff contends that Experian improperly reported that she was responsible for a civil judgment entered against her on July 31, 2003, in the amount of \$6,151.34 in favor of Providian. Plaintiff admits that the judgment was entered but disputes the propriety of the judgment on the grounds that it is in violation of a settlement agreement she had previously reached with

Providian. Plaintiff alleges that she notified Experian of her disputes with the validity of judgment and Experian failed to reinvestigate the matter. Experian has reported that Plaintiff is responsible for the disputed judgment since it was entered.

DISCUSSION

Experian moves for judgment on the pleadings asserting that the FCRA does not provide a right of action in the absence of an inaccurate credit report and its conduct was not outrageous as a matter of law. Plaintiff opposes the motion arguing that Experian did not properly reinvestigate the disputed judgment.

It is well established that in order to state a claim under the FCRA the Plaintiff must demonstrate that his or her credit report contained inaccurate information. *Cassara v. DAC Servs. Inc.*, 276 F.3d 1210, 1217 (10th Cir. 2002). It is also well established that collateral attacks against the validity of a reported judgment cannot be the basis for a cause of action under the FCRA. *See Gonzales v. Experian Info. Solutions, Inc.*, 2005 WL 925657 (D. Utah April 20, 2005).

Plaintiff claims that Experian has a duty to demonstrate that it conducted a reinvestigation when she disputed the validity of the judgment. But her dispute as to the validity of the judgment was not a dispute as to the factual accuracy of the report. Her dispute as to the validity of the judgment should have been addressed to an appellate court. Plaintiff admits that the judgment was, in fact, entered. Therefore, there was no factual deficiency in the report and any alleged failure to reinvestigate is moot. Accordingly, the court grants Experian's motion for judgment on the pleadings with respect to Plaintiff's FCRA claim.

Plaintiff's claim for intentional infliction of emotional distress also fails as a matter of

law. Such a claim must be based on conduct that is “of such a nature as to be considered outrageous and intolerable” and “against the generally accepted standards of decency and morality.” *Franco v. The Church of Jesus Christ of Latter-day Saints*, 21 P.3d 198, 206 (Utah 2001). “Whether conduct is outrageous enough is a legal question for the court to resolve.” *Matthews v. Kennecott Utah Copper Corp.*, 54 F. Supp. 2d 1067, 1075 (D. Utah 1999).

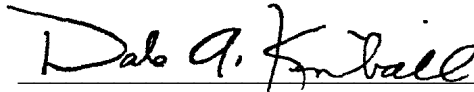
In this case, the facts do not even demonstrate that Experian acted improperly. Experian reported a matter of public record on Plaintiff’s credit report, which Plaintiff admits was factually accurate. The court has concluded that Plaintiff’s attempt at collaterally attacking the validity of the judgment does not form the basis for a claim under the FCRA. Similarly, there is no basis for Plaintiff’s claim for intentional infliction of emotional distress. The court, therefore, dismisses Plaintiff’s claim.

CONCLUSION

Defendants’ Motion for Judgment on the Pleading is GRANTED, and Plaintiff’s Complaint is dismissed prejudice, each party to bear its and her own fees and costs. The Clerk of Court is directed to enter judgment in favor of Defendant.

DATED this 23rd day of October, 2006.

BY THE COURT:



DALE A. KIMBALL,
United States District Judge

FILED
DISTRICT COURT

2006 OCT 23 A 9:48

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DIGECOR, INC., a Washington
corporation,

Plaintiff,

v.

E.DIGITAL CORPORATION, a Delaware
corporation; DOES 1 to 20, individuals;

Defendants.

STIPULATED ORDER FOR AN
EXTENSION OF TIME

Civil Case No. 02:06-CV - 00437

Judge Ted Stewart

Based on the application of Defendant e.Digital Corporation ("e.Digital") and Plaintiff digEcor, Inc. ("digEcor"), and good cause appearing therefore,

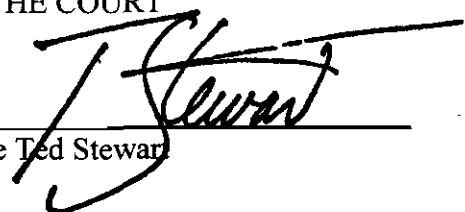
IT IS HEREBY ORDERED that the parties shall have until and including November 3, 2006 in which to file:

(1) digEcor's Reply Memorandum in Support of its Motion for Partial Summary Judgment; and

(2) e.Digital's Reply Memorandum in Support of its Motion for Judgment on the Pleadings as to the Scope of Exclusivity under the DRM Agreement..

DATED this 20th day of October, 2006.

BY THE COURT



Judge Ted Stewart

FILED
U.S. DISTRICT COURT
2006 OCT 20 PM 4:47
FEDERAL BUREAU OF INVESTIGATION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH: 47
CENTRAL DIVISION

DIANE MONETA FRITZ,)	
)	
Plaintiff,	)	Case No. 2:06-CV-657 TS
)	
v.	)	District Judge Ted Stewart
)	
STATE OF UTAH et al.,	)	O R D E R
)	
Defendants.)	

Plaintiff, Diane Moneta Fritz, filed a prisoner civil rights complaint and asked to proceed *in forma pauperis*.¹ This Court, however, will not let an inmate proceed *in forma pauperis* if the inmate has, at three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted."² The only exception is if the inmate can show that he or she is "under imminent danger of serious physical injury."³

Plaintiff has filed several previous civil actions with the federal courts, many of which have been dismissed as frivolous or failing to state a claim.⁴ Plaintiff therefore may not maintain

¹See 42 U.S.C.S. § 1983 (2006); 28 *id.* § 1915.

²28 *id.* § 1915(g).

³*Id.*


⁴See *Fritz v. Fritz*, No. 2:04-CV-330-TS (D. Utah Nov. 18, 2004) (unpublished); *Fritz v. Larson*, No. 2:04-CV-361-TS (D. Utah June 22, 2004) (unpublished); *Fritz v. Olverson*, No. 2:04-CV-377-TS (D. Utah June 9, 2004)

this action without paying the filing fee unless she can show an imminent danger of serious physical injury.⁵ She has made no such allegation or showing.

IT IS THEREFORE ORDERED that this complaint be dismissed under 28 U.S.C. § 1915(g) with no further notice to Plaintiff unless she pays the full \$350 filing fee within thirty days.

DATED this ^{20th}~~18~~th day of October, 2006.

BY THE COURT:



TED STEWART
United States District Court

(unpublished).

⁵See 28 U.S.C.S. § 1915(g) (2006).

Patricia W. Christensen (0645)
Matthew J. Ball (9414)
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FILED OCT 20 2006
U.S. DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL
2006 OCT 23
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BASIC RESEARCH, LLC, a Utah limited
liability company; and KLEIN-BECKER usa,
LLC, a Utah limited liability company,

Plaintiffs,

v.

DISTROMEX S.A. de CV, a Mexican
corporation; and SPFM, L.P., a Texas limited
partnership,

Defendants.

ORDER GRANTING *EX PARTE*
MOTION FOR LEAVE TO FILE
OVERLENGTH REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

Case No. 2:06CV00669 TC

Judge Tena Campbell

Based upon defendants Distromex S.A. de CV and SPFM, L.P.'s (collectively, "Defendants")
Ex Parte Motion for Leave to File Overlength Reply Memorandum in Support of Motion to Dismiss,
and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendants are granted leave of Court to file their overlength Reply Memorandum in Support of Motion to Dismiss containing not more than 15 pages of argument.

DATED this 20 day of October, 2006.

BY THE COURT:

Tena Campbell

Honorable Tena Campbell
U.S. District Court Judge

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CLERK OF UTAH

DANIEL LEE LAIRD,)	
)	
Plaintiff,	)	Case No. 2:06-CV-671 TS
)	
v.	)	District Judge Ted Stewart
)	
MICHAEL SIBBETT et al.,	)	O R D E R
)	
Defendants.	)	Magistrate Judge Samuel Alba

Plaintiff, Daniel Lee Laird, an inmate at Utah State Prison, filed a *pro se* prisoner civil rights complaint. See 42 U.S.C.S. § 1983 (2006). The Court has already granted Plaintiff's application to proceed *in forma pauperis* and ordered him to pay an initial partial filing fee (IPFF). Since that order, Plaintiff has moved the Court to waive his IPFF and submitted documentation showing he cannot pay it.

Good cause appearing, the Court grants Plaintiff's motion and will waive Plaintiff's IPFF. However, Plaintiff must still eventually pay the total \$350 filing fee still in effect here. The form entitled "Consent to Collection of Fees from Inmate Trust Account," which Plaintiff has already signed, copied, and returned to the Court as ordered, states:

I . . . consent for the appropriate prison officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust

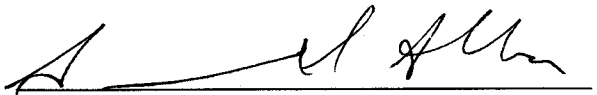
Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350 filing fee is paid in full. The prison will make monthly payments from Plaintiff's prison account of twenty percent of the preceding month's income credited to Plaintiff's account.

Thus, if and when Plaintiff's inmate trust account ever reaches \$10, he must pay toward his filing fee. See 28 *id.* § 1915(b)(2).

IT IS HEREBY ORDERED that the Court grants Plaintiff's motion to waive his IPFF. (See File Entry # 9.) However, Plaintiff must still eventually pay \$350, the full amount of the filing fee. To do this, Plaintiff must make monthly payments of 20% of the preceding month's income credited to his account when the account balance reaches \$10.

DATED this 18th day of October, 2006.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge